

**BUSINESS MEETING ON A REPORT RECOM-
MENDING THAT THE HOUSE OF REPRESENTA-
TIVES CITE STEPHEN K. BANNON FOR CRIMI-
NAL CONTEMPT OF CONGRESS**

MEETING

OF THE

**SELECT COMMITTEE TO
INVESTIGATE THE JANUARY 6TH
ATTACK ON THE
UNITED STATES CAPITOL
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS**

FIRST SESSION

OCTOBER 19, 2021

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Attack On the United States Capitol



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MELINDA ARONS
STEVE BAKER
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BUSINESS MEETING ON A REPORT RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES CITE STEPHEN K. BANNON FOR CRIMINAL CONTEMPT OF CONGRESS

Tuesday, October 19, 2021

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH
ATTACK ON THE UNITED STATES CAPITOL,
Washington, DC.

The Committee met, pursuant to notice, at 7:37 p.m., in room 390, Cannon House Office Building, Hon. Bennie G. Thompson (Chairman of the Committee) presiding.

Present: Representatives Thompson, Cheney, Lofgren, Schiff, Aguilar, Murphy, Raskin, Luria, and Kinzinger.

Chairman THOMPSON. A quorum being present, the Select Committee to Investigate the January 6th Attack on the United States Capitol will be in order.

The Select Committee is meeting this evening to consider a report on a resolution recommending that the House of Representatives find Stephen K. Bannon in contempt of Congress for refusal to comply with a subpoena duly issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol.

Without objection, the Chair is authorized to declare the Committee in recess at any time.

I will now recognize myself for an opening statement.

Let me start by saying that it gives me no joy that I have been forced to call this meeting. I think my colleagues feel the same way.

The expectation of this Committee is that all witnesses will cooperate with our investigation. Witnesses who have been subpoenaed have a legal obligation to do so.

When you think about what we are investigating—a violent attack on the seat of our democracy, perpetrated by fellow citizens on our Constitution, an attempt to stop the certification of an election—it is shocking to me, shocking that anyone would not do anything in their power to assist our investigation.

So it is a shame that Mr. Bannon has put us in this position. But we won't take no for an answer. We believe Mr. Bannon has information relevant to our probe, and we will use the tools at our disposal to get that information.

I expect that the House will quickly adopt this referral to the Justice Department and that the U.S. attorney will do his duty and prosecute Mr. Bannon for criminal contempt of Congress.

Our goal is simple. We want Mr. Bannon to answer our questions. We want him to turn over whatever records he possesses that are relevant to the Select Committee's investigation.

The issue in front of us today is our ability to do our job. It is about fulfilling our responsibilities according to House Resolution 503 to provide the American people answers about what happened on January 6th and help ensure nothing like that day ever happens again.

We fulfill our responsibilities by discovering the facts behind the January 6th attack so that Congress can consider legislation with a full understanding of the activities that led to an attack on Congress itself.

I want to make it clear just how isolated Mr. Bannon is in his refusal to cooperate with the Select Committee. We have reached out to dozens of witnesses. We are taking in thousands of pages of records. We are conducting interviews on a steady basis. This is the shoe leather work of conducting a serious, focused investigation. It is not flashy, but it gets results.

It is essential that we get Mr. Bannon's factual and complete testimony in order to get a full accounting of the violence of January 6th and its causes.

Mr. Bannon stands alone in his complete defiance of our subpoena. That is not acceptable. No one in this country, no matter how wealthy or how powerful, is above the law. Left unaddressed, this defiance may encourage others to follow Mr. Bannon down the same path.

For folks watching at home this evening, I want you to think about something. What would happen to you if you did what Mr. Bannon is doing? If you were a material witness in a criminal prosecution or some other lawsuit, what would happen if you refused to show up? Do you think you would be able to just go about your business? We all know the answer to that.

There isn't a different set of rules for Mr. Bannon. He knows this. He knows that there are consequences for outright defiance, and he has chosen the path toward criminal contempt by taking this position.

There are bigger matters at stake. One of the major questions the Select Committee is dealing with is whether the rule of law will be able to endure as a pillar of American democracy. After all, we have seen the rule of law put to the test repeatedly in our recent past.

While we don't know all of the facts, we do know that there was a powerful push to overturn the legitimate results of the 2020 election. Americans have been and continue to be lied to about that. We know that ultimately there was a violent attack that interfered with the peaceful transfer of power from one President to another. We know that lies about the outcome of that election haven't gone away.

Now we have a key witness who is flat-out refusing to comply with a congressional subpoena and cooperate with our investigation. The rule of law remains under attack right now. If there is no accountability for these abuses, if there are different sets of rules for different types of people, then our democracy is in serious trouble.

As Chair of this Committee, I won't allow further harm to the rule of law in the course of our work. Mr. Bannon will comply with our investigation or he will face the consequences.

Maybe he is willing to be a martyr to a disgraceful cause of whitewashing what happened on January 6th or demonstrating his complete loyalty to the former President.

So I want our witnesses to understand something very plainly: If you are thinking of following the path Mr. Bannon has gone down, you are on notice that this is what you will face.

The process we have begun tonight is a grave one. It seldom happens, and we would rather avoid it altogether. But it is not reserved just for Steve Bannon. If other witnesses defy this Committee, if they fail to cooperate, we will be back in this room with a new report with the names of whoever else mistakenly believes that they are above the law.

We hope no other witnesses put themselves in the situation Mr. Bannon has through his own conduct, but we cannot allow anyone to stand in the way of the Select Committee as we work to get to the facts. The stakes are just too high. We won't be deterred, we won't be distracted, and we won't be delayed.

I urge my colleagues to support the favorable adoption of this report.

It is now my pleasure to recognize the distinguished Vice Chair, my friend, Ms. Cheney of Wyoming, for any statement she would care to offer.

Vice Chair CHENEY. Thank you very much, Mr. Chairman.

On January 6th, a mob breached the security perimeter of our Capitol, assaulted and injured more than 140 police officers, engaged in hand-to-hand violence over an extended period, and invaded and occupied the United States Capitol Building, all in an effort to halt the lawful counting of electoral votes and reverse the results of the 2020 election.

The day before this all occurred, on January 5th, Mr. Bannon publicly professed knowledge that, "All hell is going to break loose tomorrow." He forecast that the day would be, "extraordinarily different than what most Americans expected." He said to his listeners and his viewers, "So many people said, 'If I was in a revolution, I would be in Washington.'" "Well," he said, "this is your time in history."

Based on the Committee's investigation, it appears that Mr. Bannon had substantial advance knowledge of the plans for January 6th and likely had an important role in formulating those plans.

Mr. Bannon was in the "war room" at the Willard on January 6th. He also appears to have detailed knowledge regarding the President's efforts to sell millions of Americans the fraud that the election was stolen.

In the words of many who participated in the January 6th attack, the violence that day was in direct response to President Trump's repeated claims, from election night through January 6th, that he had won the election.

The American people are entitled to Mr. Bannon's first-hand testimony about all of these relevant facts. But as the Chairman noted, Mr. Bannon is refusing to provide it.

Preserving our Constitution and the rule of law is a central purpose of this investigation. The plain fact here is that Mr. Bannon has no legal right to ignore the Committee's lawful subpoena.

So far, Mr. Bannon's excuse is that former President Trump wishes to invoke some form of executive privilege for a subset of the relevant topics: President Trump's direct communications with Mr. Bannon regarding the planning for January 6th.

This information should not be subject to any privilege at all, and certainly there is no basis for absolute or unqualified privilege for Presidential communications.

More important now, there is no conceivably applicable privilege that could shield Mr. Bannon from testimony on all of the many other topics identified in this Committee subpoena.

Because he has categorically refused to appear, we have no choice but to seek consequences for Mr. Bannon's failure to comply. Those consequences are not just important for this investigation. They are important for all congressional investigations.

Mr. Bannon's and Mr. Trump's privilege arguments do, however, appear to reveal one thing. They suggest that President Trump was personally involved in the planning and execution of January 6th, and this Committee will get to the bottom of that.

Let me add one further thought, principally for my Republican colleagues.

We all agree that America is the greatest Nation on the face of God's Earth. Truth, justice, and our Constitution have made America great.

Almost every one of my colleagues knows in their hearts that what happened on January 6th was profoundly wrong. You all know that there is no evidence of widespread election fraud sufficient to have changed the results of the election. You all know that the Dominion voting machines were not corrupted by a foreign power. You know these claims are false.

Yet former President Trump repeats them almost daily, and he has now urged Republicans not to vote in 2022 and 2024. This is a prescription for national self-destruction.

I ask my colleagues, please consider the fundamental questions of right and wrong here. The American people must know what happened. They must know the truth. All of us who are elected officials must do our duty to prevent the dismantling of the rule of law and to ensure that nothing like that dark day in January ever happens again.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Pursuant to notice, I now call up the *Report on a Resolution Recommending that the House of Representatives Find Stephen K. Bannon in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol*.

The report was circulated in advance and printed copies are available. The clerk shall designate the report.

[The clerk designated the report.]

Chairman THOMPSON. Without objection, the report will be considered as read and open to amendment at any time.*

*For the text of the report, see Appendix.

Chairman THOMPSON. I recognize myself for the purpose of offering an amendment in the nature of a substitute now at the desk. The clerk shall report the amendment.

[The clerk designated the amendment.]

Chairman THOMPSON. Without objection, the amendment will be considered as read and considered base text for purposes of further amendment.**

Chairman THOMPSON. I will now recognize myself to explain the amendment.

Yesterday evening, counsel to Mr. Bannon requested a 1-week adjournment of our response to a letter I wrote on October 15th which stated that Mr. Bannon's willful defiance of the Select Committee's subpoena would lead to tonight's hearing.

Without objection, I include my October 15 letter in the record, as well as yesterday's letter from Robert J. Costello, Mr. Bannon's attorney.

[The information follows:]

LETTER FROM CHAIRMAN BENNIE G. THOMPSON TO ROBERT J. COSTELLO

October 15, 2021.

Mr. ROBERT J. COSTELLO,
Davidoff Hutcher & Citron LLP, [redacted].

DEAR MR. COSTELLO: The Select Committee to Investigate the January 6th Attack ("Select Committee") is in receipt of your October 13, 2021 letter (the "October 13 letter"), in which you reassert that your client, Stephen Bannon, will not comply with the September 23, 2021 Subpoena to him for documents and deposition testimony (the "Subpoena"). As you know, the Subpoena demanded that Mr. Bannon produce documents by October 7, 2021 and appear on October 14, 2021 before the Select Committee to provide deposition testimony on a wide range of issues relating to the January 6, 2021 attack on the United States Capitol, as well as plans to interfere with the count of the 2020 Electoral College results. Mr. Bannon has now willfully failed to both produce a single document and to appear for his scheduled deposition. The Select Committee believes that this willful refusal to comply with the Subpoena constitutes a violation of Federal law.

As justification for Mr. Bannon's complete failure to comply with any portion of the Subpoena, you continue to rely on ex-President Trump's stated intention to invoke executive privilege with respect to Mr. Bannon, and Mr. Trump's purported request that Mr. Bannon not produce documents to or testify before the Select Committee. As was explained in the Select Committee's October 8, 2021 letter (attached), the former President has not communicated any such assertion of privilege, whether formally or informally, to the Select Committee. Moreover, we believe that any such assertion of privilege—should it be made by the former President—will not prevent the Select Committee from lawfully obtaining the information it seeks.

Further, your letter makes no attempt to justify Mr. Bannon's failure to comply with the Subpoena's demand for documents and testimony on a range of subjects that do not involve communications with the former President. As is clear from the Subpoena and accompanying letter, and as underscored in the Select Committee's October 8, 2021 response letter, the Select Committee seeks documents and testimony on numerous other matters, including Mr. Bannon's communications with Members of Congress, Presidential campaign representatives, and other private parties concerning the events of January 6, 2021, that could not conceivably be barred by a privilege claim.

Moreover, even if the Select Committee were inclined to accept the unsupported premise that executive privilege reaches communications that the Select Committee seeks to examine between President Trump and Mr. Bannon,¹ Mr. Bannon does not

** For the text of the amendment in the nature of a substitute, see Appendix.

¹ Notably, neither of the cases you cite supports the claim that communications between the former President and a private citizen may be shielded by either the Presidential communications or deliberative process privilege. Indeed, the case you rely upon to support your Presidential communications claim specifically held that the privilege extends only to a President's closest advisors in the White House. *In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir.

enjoy any form of absolute immunity from testifying or producing documents in response to a congressional subpoena. Your citation to *Committee on Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019) actually supports the Select Committee, not your client. In *McGahn*, the district court unequivocally held that even senior White House aides are not entitled to absolute immunity from testifying in response to a congressional subpoena. *Id.* at 214 (“To make the point as plain as possible, it is clear to this Court . . . that, with respect to senior-level Presidential aides, absolute immunity from compelled congressional process simply does not exist.”).² Indeed, the footnote in *McGahn* that you selectively quote makes clear that a President lacks legal authority to order an aide not to appear before Congress based on a claim of executive privilege. *See Id.* at 213, n. 34 (“But the invocation of the privilege by a testifying aide is an order of magnitude different than DOJ’s current claim that the President essentially owns the *entirety* of a senior-level aide’s testimony such that the White House can order the individual not to appear before Congress *at all*.” (Emphasis in original)).

Accordingly, the Select Committee views Mr. Bannon’s failure to produce documents by the October 7, 2021 deadline as willful non-compliance with the Subpoena. Mr. Bannon has persisted in his refusal to produce any documents to the Select Committee, and he has failed to provide a privilege log identifying specific, asserted privileges. Mr. Bannon has now further compounded his non-compliance by refusing to appear on October 14, 2021 at the Select Committee deposition to which he was summoned to provide testimony. The Select Committee will therefore be meeting on Tuesday, October 19, 2021 to consider invoking the contempt of Congress procedures set forth in 2 U.S.C. §§ 192, 194.

If Mr. Bannon believes that there are any additional issues relating to his non-compliance with the Subpoena that have not been addressed, please submit them in writing to the Select Committee by 6 o’clock p.m. E.S.T. on Monday, October 18, 2021 for the Select Committee’s consideration in its deliberations.

Sincerely,

BENNIE G. THOMPSON,
Chairman.

1997). *See also Committee on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 100 (D.D.C. 2008) (privilege claimants acknowledged that executive privilege applies only to “a very small cadre of senior advisors”).

²The *McGahn* court followed *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 108 (D.D.C. 2008), which reached the same conclusion 13 years ago. *McGahn*, 415 F. Supp. 3d at 202–03 (“this Court finds that the *Miers* court rightly determined not only that the principle of absolute testimonial immunity for senior-level Presidential aides has no foundation in law, but also that such a proposition conflicts with key tenets of our constitutional order”).



DAVIDOFF HUTCHER & CITRON LLP
ATTORNEYS AT LAW

FIRM OFFICES
WHITE PLAINS
ATTORNEYS AT LAW

WEST PALM BEACH
ATTORNEYS AT LAW

FIRM OFFICES
ALBANY
ATTORNEYS AT LAW

WASHINGTON, D.C.
ATTORNEYS AT LAW

October 18, 2021

Hon. Bennie G. Thompson
Chairman
House Select Committee to Investigate the January 6th Attack
Washington, DC 20515

Re: The Subpoena for Stephen K. Bannon dated September 23, 2021

Dear Congressman Thompson:

We write on behalf of Stephen Bannon. We have just been advised of the filing of a lawsuit in federal court for the District of Columbia entitled Donald J. Trump v. Bennie Thompson, et al., 21-Civ-02769 (D.D.C. 2021). In light of this late filing, we respectfully request a one-week adjournment of our response to your latest letter so that we might thoughtfully assess the impact of this pending litigation.

Very truly yours,

/s/ Robert J. Costello

RJC/nc

Chairman THOMPSON. Mr. Bannon's attorney said they needed time to, "assess the Select Committee's request in light of litigation filed by former President Trump in the District of Columbia District Court yesterday." However, the former President's lawsuit is immaterial to Mr. Bannon's defiance of our lawful subpoena. I made that clear in a letter to Mr. Costello this morning.

Without objection, I include my full letter in the record.
[The information follows:]

LETTER FROM CHAIRMAN BENNIE G. THOMPSON TO ROBERT J. COSTELLO

October 19, 2021.

Mr. ROBERT J. COSTELLO,
Davidoff Hutcher & Citron LLP, [redacted].

DEAR MR. COSTELLO: I write yet again to urge your client Stephen K. Bannon to change course and comply with the September 23, 2021, subpoena from the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee").

As explained in our prior correspondence, your stated reasons for Mr. Bannon's flat refusal to provide documents and appear at a deposition have no legal basis or support. Because of Mr. Bannon's continued refusal to comply with the subpoena, the Select Committee has unanimously voted to recommend that the House of Representatives find Mr. Bannon to be in contempt of Congress. The detailed basis for that recommendation is contained in the Select Committee's report, a copy of which is available at the following link: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=114156>. Should the House of Representatives agree with that recommendation, the Speaker of the House will certify the relevant statement of facts to the United States Attorney for the District of Columbia, "whose duty it shall be to bring the matter before the grand jury for its action." See 2 U.S.C. § 194.

Additionally, President Biden's recently communicated views relating to your client's reliance on executive privilege as a basis for his non-compliance provide further support for the Select Committee's position. As you know, in its October 18, 2021, letter, the Office of the White House Counsel concluded that "at this point we are not aware of any basis for [Mr. Bannon's] refusal to appear for a deposition." The letter further noted that President Biden has "already determined that an assertion of executive privilege is not in the public interest, and therefore is not justified, with respect to certain subjects within the purview of the Select Committee." In short, the current President's statements should remove any doubt regarding the inappropriateness of Mr. Bannon's reliance on assertions of executive privilege as grounds for his noncompliance with the subpoena. Mr. Bannon has no basis in law to continue to defy the appropriate use of congressional subpoena authority.

These developments underscore the folly of any continuing defiance of the Select Committee subpoena by Mr. Bannon. The Select Committee remains focused on expeditiously obtaining the testimony and documents necessary to meet our responsibilities and we continue to expect immediate compliance by Mr. Bannon. Should Mr. Bannon choose to change his posture, please notify Select Committee staff [redacted].

Sincerely,

BENNIE G. THOMPSON,
Chairman.

Chairman THOMPSON. Furthermore, the White House yesterday issued a letter to Mr. Bannon's attorney stating, "We are not aware of any basis for your client's refusal to appear for a deposition," before the Select Committee, and further said that, "President Biden has already determined that an assertion of executive privilege is not in the public interest and, therefore, is not justified with respect to certain subjects within the purview of the Select Committee."

Without objection, I include the full White House letter in the record.

[The information follows:]



October 18, 2021

Robert J. Costello
Davidoff Hutcher & Citron LLP
[REDACTED]

Dear Mr. Costello:

I write regarding the subpoena for documents and deposition testimony issued on September 23, 2021, by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee") to your client, Stephen K. Bannon.

As you are aware, Mr. Bannon's tenure as a White House employee ended in 2017. To the extent any privileges could apply to Mr. Bannon's conversations with the former President or White House staff after the conclusion of his tenure, President Biden has already determined that an assertion of executive privilege is not in the public interest, and therefore is not justified, with respect to certain subjects within the purview of the Select Committee. Specifically, President Biden determined that an assertion of executive privilege is not justified with respect to a set of documents shedding light on events within the White House on and about January 6, 2021,¹ and with respect to documents and testimony concerning the former President's efforts to use the Department of Justice to advance a false narrative that the 2020 election was tainted by widespread fraud.² President Biden's determination that an assertion of privilege is not justified with respect to these subjects applies to your client's deposition testimony and to any documents your client may possess concerning either subject.

Please contact me if you have questions about the matters described herein. Please note, however, that at this point we are not aware of any basis for your client's refusal to appear for a deposition.

Sincerely,

Jonathan C. Su
Deputy Counsel to the President

cc: [REDACTED]

Select Committee to Investigate the January 6th Attack on the United States Capitol

¹ See Letter to David S. Ferriero, Archivist of the United States, from Dana A. Remus, Counsel to the President (Oct. 8, 2021).

² See Letter to Jeffrey A. Rosen from G. Bradley Weinsheimer, Associate Deputy Attorney General, Department of Justice (July 26, 2021).

Chairman THOMPSON. This amendment in the nature of a substitute updates the report to reflect these developments, and it is now even clearer that Mr. Bannon has no lawful grounds not to comply with our subpoena.

If there is no further debate, the question is on agreeing to the amendment in the nature of a substitute.

Those in favor, say "aye".

Those opposed, say "no".

In the opinion of the Chair, the ayes have it, and the amendment in the nature of a substitute is agreed to.

I now recognize the Vice Chair, Ms. Cheney, for a motion.

Vice Chair CHENEY. Mr. Chairman, I move that the Committee favorably report to the House the Committee's *Report on a Resolution Recommending that the House of Representatives Find Stephen K. Bannon in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol*, as amended.

Chairman THOMPSON. The question is on the motion to favorably report to the House.

Those in favor, say "aye".

Those opposed, "no".

In the opinion of the Chair, the ayes have it.

Vice Chair CHENEY. Mr. Chairman, I request a recorded vote.

Chairman THOMPSON. A recorded vote is requested. The clerk will call the roll.

[The clerk called the roll, and the result was announced as follows:]

Select Committee Rollcall No. 1

Motion by Vice Chair Cheney to Favorably Report, as Amended
Agreed to: 9 ayes to 0 noes

Members	Vote
Ms. Cheney, Vice Chair	Aye
Ms. Lofgren	Aye
Mr. Schiff	Aye
Mr. Aguilar	Aye
Mrs. Murphy (FL)	Aye
Mr. Raskin	Aye
Mrs. Luria	Aye
Mr. Kinzinger	Aye
Mr. Thompson (MS), Chairman	Aye

Chairman THOMPSON. The motion is agreed to.

The Vice Chair is recognized.

Vice Chair CHENEY. Mr. Chairman, pursuant to clause 2(1) of rule XI, I request that Members have 2 calendar days in which to file with the clerk of the Committee supplemental or additional views on the measure ordered reported by the Committee tonight.

Chairman THOMPSON. So ordered.

Without objection, staff is authorized to make any necessary technical or conforming changes to the report to reflect the actions of the Committee.

There being no further business, without objection, the Select Committee stands adjourned.

[Whereupon, at 7:57 p.m., the Select Committee was adjourned.]

A P P E N D I X

REPORT ON A RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND STEPHEN K. BANNON IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY
WITH A SUBPOENA DULY ISSUED BY THE SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL

House Calendar No.

117TH CONGRESS } 1st Session	HOUSE OF REPRESENTATIVES	{ REPORT 117-
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RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND STEPHEN K. BANNON IN CONTEMPT OF CONGRESS FOR REFUSAL
TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE SELECT COM-
MITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED
STATES CAPITOL.

OCTOBER --, 2021.—Referred to the House Calendar and ordered to be printed

Mr. THOMPSON of Mississippi, from the Select Committee to Inves-
tigate the January 6th Attack on the United States Capitol,
submitted the following

R E P O R T

The Select Committee to Investigate the January 6th Attack on
the United States Capitol, having considered this Report, reports
favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Select Committee to Inves-
tigate the January 6th Attack on the United States Capitol would
recommend to the House of Representatives for citing Stephen K.
Bannon for contempt of Congress pursuant to this Report is as fol-
lows:

Resolved, That Stephen K. Bannon shall be found to be in con-
tempt of Congress for failure to comply with a congressional sub-
poena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker
of the House of Representatives shall certify the report of the Se-
lect Committee to Investigate the January 6th Attack on the
United States Capitol, detailing the refusal of Stephen K. Bannon
to produce documents or appear for a deposition before the Select
Committee to Investigate the January 6th Attack on the United
States Capitol as directed by subpoena, to the United States Attor-
ney for the District of Columbia, to the end that Mr. Bannon be
proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all
appropriate action to enforce the subpoena.

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PURPOSE AND SUMMARY

On January 6, 2021, a violent mob breached the security perimeter of the United States Capitol, assaulted and injured scores of police officers, engaged in hand-to-hand violence with those officers over an extended period, and invaded and occupied the Capitol building, all in an effort to halt the lawful counting of electoral votes and reverse the results of the 2020 election. In the words of many of those who participated in the violence, the attack was a direct response to false statements by then-President Donald J. Trump—beginning on election night 2020 and continuing through January 6, 2021—that the 2020 election had been stolen by corrupted voting machines, widespread fraud, and otherwise.

In response, the House adopted House Resolution 503 on June 30, 2021, establishing the Select Committee to Investigate the January 6th Attack on the United States Capitol (hereinafter referred to as the “Select Committee”).

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify how the events of January 6th were planned, what actions and statements motivated and contributed to the attack on the Capitol, how the violent riot that day was coordinated with a political and public relations strategy to reverse the election outcome, and why Capitol security was insufficient to address what occurred. The Select Committee will evaluate all facets of these issues, create a public record of what occurred, and recommend to the House, and its relevant committees, corrective laws, policies, procedures, rules, or regulations.

According to many published reports, and his own public statements, Stephen K. Bannon had specific knowledge about the events planned for January 6th before they occurred. He said on his January 5th podcasts, for example:

It's not going to happen like you think it's going to happen. OK, it's going to be quite extraordinarily different. All I can say is, strap in. [...] You made this happen and tomorrow it's game day. So strap in. Let's get ready.¹

All hell is going to break loose tomorrow. [...] So many people said, 'Man, if I was in a revolution, I would be in Washington.' Well, this is your time in history.²

¹Steve Bannon, “War Room: Pandemic,” EP 634 – Tuesday Special (with Maggie Vanderberghe, Ben Berquam, and Peter Navarro), (Jan. 5, 2021), available at <https://rumble.com/vch/pu-ep-634-tuesday-special-w-maggie-vanderberghe-ben-berquam-and-peter-navarro.html>.

²Aaron Blake, “Who could have predicted the Capitol riot? Plenty of people – including Trump allies,” *Washington Post*, (Jan. 28, 2021), available at <https://www.washingtonpost.com/politics/2021/01/28/who-could-have-predicted-capitol-riots-plenty-people/>.

Mr. Bannon appears to have had multiple roles relevant to this investigation, including his role in constructing and participating in the “stop the steal” public relations effort that motivated the attack, his efforts to plan political and other activity in advance of January 6th, and his participation in the events of that day from a “war room” organized at the Willard InterContinental Washington D.C. Hotel (the “Willard Hotel”). Although he was a private citizen not employed by the White House at the time, he reportedly spoke with Mr. Trump directly regarding the plans for January 6th on at least one occasion. In short, Mr. Bannon appears to have played a multi-faceted role in the events of January 6th, and the American people are entitled to hear his first-hand testimony regarding his actions. The Select Committee expects that such testimony will be directly relevant to its report and recommendations for legislative and other action.

On September 23, 2021, Chairman BENNIE G. THOMPSON signed a subpoena for documents and testimony and transmitted it along with a cover letter and schedule to counsel for Mr. Bannon, who accepted service on Mr. Bannon’s behalf on September 24, 2021.³ The subpoena required that Mr. Bannon produce responsive documents not later than October 7, 2021, and that Mr. Bannon appear for a deposition on October 14, 2021. Subsequent communications between counsel for Mr. Bannon and Chairman THOMPSON, however, failed to reach any accommodation for Mr. Bannon’s appearance for testimony or production of documents. Indeed, counsel for Mr. Bannon on October 7, 2021, flatly stated that Mr. Bannon would not produce any documents or appear at the scheduled deposition, as ordered by the lawful subpoena. Although Mr. Bannon’s counsel referenced vague claims of executive privilege purportedly relayed by the former President, no such claims have been presented by the former President to the Select Committee.⁴ And although the Select Committee is confident that such claims could not bar any of its requests, there is no conceivable executive privilege claim that could bar *all* of the Select Committee’s requests or justify Mr. Bannon’s flat refusal to appear for the required deposition. The Chairman’s October 8, 2021, response addressed the legal arguments raised by Mr. Bannon’s counsel and made clear that the Select Committee expected—as the law demands—that Mr. Bannon appear before the Select Committee at his deposition and raise any privilege or other concerns regarding specific questions on the record of that proceeding.⁵

The contempt of Congress statute, 2 U.S.C. § 192, makes clear that a witness summoned before Congress must appear or be “deemed guilty of a misdemeanor” punishable by a fine of up to \$100,000 and imprisonment for up to 1 year.⁶ Further, the Supreme Court in *United States v. Bryan* (1950) emphasized that the subpoena power is a “public duty, which every person within the jurisdiction of the Government is bound to perform when properly

³See Appendix, Ex. 1, 2 (Subpoena from Chairman BENNIE G. THOMPSON to Stephen K. Bannon and attachments (Sept. 23, 2021)).

⁴See Appendix, Ex. 3 (Letter from Robert J. Costello to Chairman BENNIE G. THOMPSON (Oct. 7, 2021)).

⁵See Appendix, Ex. 4 (Letter from Chairman BENNIE G. THOMPSON to Robert J. Costello (Oct. 8, 2021)).

⁶The prison term for this offense makes it a Class A misdemeanor. 18 U.S.C. § 3559(a)(6). By that classification, the penalty for contempt of Congress specified in 2 U.S.C. § 192 increased from \$1,000 to \$100,000. 18 U.S.C. § 3571(b)(5).

summoned.”⁷⁷ The Supreme Court recently reinforced this clear obligation by stating that “[w]hen Congress seeks information needed for intelligent legislative action, it unquestionably remains the duty of all citizens to cooperate.”⁷⁸

Mr. Bannon did not produce documents by the subpoena’s October 7, 2021, deadline nor did he appear for a deposition scheduled for October 14, 2021, as ordered by the subpoena and in contravention of the clear instructions by the Select Committee Chairman on October 8, 2021, to appear at the deposition and raise any privilege concerns in response to specific questions on the record. Mr. Bannon’s refusal to comply with the Select Committee’s subpoena *in any way* represents willful default under the law and warrants contempt of Congress and referral to the United States Attorney for the District of Columbia for prosecution as prescribed by law. The denial of the information sought by the subpoena impairs Congress’s central powers under the United States Constitution.

BACKGROUND ON THE SELECT COMMITTEE’S INVESTIGATION

House Resolution 503 sets out the specific purposes of the Select Committee, including:

- to investigate and report upon the facts, circumstances, and causes “relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex”;
- to investigate and report upon the facts, circumstances, and causes “relating to the interference with the peaceful transfer of power”; and
- to investigate and report upon the facts, circumstances, and causes relating to “the influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process.”

The Supreme Court has long recognized Congress’s oversight role. “The power of the Congress to conduct investigations is inherent in the legislative process.”⁷⁹ Indeed, Congress’s ability to enforce its investigatory power “is an essential and appropriate auxiliary to the legislative function.”⁸⁰ “Absent such a power, a legislative body could not ‘wisely or effectively’ evaluate those conditions ‘which the legislation is intended to affect or change.’”⁸¹

The oversight powers of House and Senate committees are also codified in legislation. For example, the Legislative Reorganization Act of 1946 directed committees to “exercise continuous watchfulness” over the executive branch’s implementation of programs within its jurisdictions,⁸² and the Legislative Reorganization Act of 1970 authorized committees to “review and study, on a continuing basis, the application, administration, and execution” of laws.⁸³

⁷⁷ *United States v. Bryan*, 339 U.S. 323, 331 (1950).

⁷⁸ *Trump v. Mazars USA LLP*, 140 S.Ct. 2019, 2036 (2020) (emphasis in original; internal quotation marks removed). See also *Watkins v. United States*, 354 U.S. 178, 187-88 (1957) (stating of citizens that “It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation.”).

⁷⁹ *Mazars*, 140 S.Ct. at 2031 (2020) (citing *Watkins*, 354 U.S. at 187) (internal quotation marks removed).

⁸⁰ *Mazars*, 140 S.Ct. at 2031 (2020) (citing *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927)).

⁸¹ *Ashland Oil, Inc. v. FTC*, 409 F.Supp. 297, 305 (D.D.C. 1976), *aff’d*, 548 F.2d 977 (D.C.Cir. 1976) (quoting *McGrain*, 273 U.S. at 175).

⁸² Pub. L. 79-401, 79th Cong. § 106, (1946).

⁸³ Pub. L. 91-250, 91st Cong. § 118, (1970).

Pursuant to House rule XI and House Resolution 503, the Select Committee is authorized "to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary." Further, section 5(c)(4) of House Resolution 503 provides that the Chairman of the Select Committee may "authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study" conducted pursuant to the enumerated purposes and functions of the Select Committee. The Select Committee's authorizing resolution further states that the Chairman "may order the taking of depositions, including pursuant to subpoena, by a Member or counsel of the Select Committee, in the same manner as a standing committee pursuant to section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress."

A. The Select Committee seeks information from Mr. Bannon central to its investigative purposes

Mr. Bannon's testimony and document production are critical to the Select Committee's investigation. Among other topics, the Select Committee seeks facts that explain why the events of January 6th turned violent. Statements publicly made by Mr. Bannon on January 5, 2021, suggest that he had some foreknowledge about extreme events that would occur the next day. Mr. Bannon noted on January 5th that the country was facing a "constitutional crisis" and "that crisis is about to go up about five orders of magnitude tomorrow."¹⁴ He also stated that, "All hell is going to break loose tomorrow. [...] It's not going to happen like you think it's going to happen. OK, it's going to be quite extraordinarily different."¹⁵ Congress, through the Select Committee, is entitled to discover facts concerning the activities leading up to the violence on January 6th. Under House Resolution 503, the Select Committee is directed to investigate those facts, which include "the influencing factors that fomented such an attack." And after making public statements on January 5th like those quoted above, Mr. Bannon is obliged by law to comply with the reasonable requests of the Select Committee through its subpoena. If any witness so close to the events leading up to the January 6th attack could decline to provide information to the Select Committee, Congress would be severely hamstrung in its ability to exercise its constitutional powers with highly relevant information informing its choices. Information in Mr. Bannon's possession is essential to putting other witnesses' testimony and productions into appropriate context and to ensuring the Select Committee can fully and expeditiously complete its work.

Mr. Bannon was the Chief Executive Officer of Mr. Trump's 2016 presidential campaign and served as then-President Trump's chief strategist, a White House position, for 8 months in 2017.¹⁶ Mr.

¹⁴Steve Bannon, "War Room: Pandemic," EP 634 - Tuesday Special (with Maggie VandenBergh, Ben Berquam, and Peter Navarro), (Jan. 5, 2021), available at <https://rumble.com/vcb9pu-ep-634-tuesday-special-w-maggie-vandenbergh-ben-berquam-and-peter-navarro.html>.

¹⁵*Id.*

¹⁶Brian Bennett, "You Got to Be the Last Guy He Talks To: The Rise and Fall of Trump Adviser Steve Bannon," *Time*, (Aug. 21, 2020), available at <https://time.com/5882072/rise-and-fall-of-steve-bannon/>.

Trump fired Mr. Bannon in August 2017,¹⁷ and Mr. Bannon did not thereafter hold a position in the executive branch.

After Mr. Bannon left government service, he remained actively involved in media and politics. In October 2019, Mr. Bannon began a radio show and podcast focused on rallying supporters of Mr. Trump in support of various causes and issues.¹⁸ According to one report, before the election even occurred in 2020, Mr. Bannon made public efforts to explain “his belief that the Democrats are plotting to steal the 2020 election.”¹⁹ One account of conversations involving Mr. Bannon (and Mr. Trump) prior to January 6th describes Mr. Bannon as encouraging Mr. Trump to “focus on January 6th” and articulating a plan to have millions of Americans consider Mr. Biden an illegitimate President.²⁰ That same reporting suggests that Mr. Bannon was in frequent contact with the White House in late-December and early-January and spoke directly with the President several times.²¹ Mr. Bannon is reported to have urged then-President Trump to pressure then-Vice President Michael R. Pence to assist in overturning the results of the 2020 election.²²

Mr. Bannon was reportedly encouraging President Trump’s supporters to take dramatic action. According to one report, immediately after the November 3rd election, Mr. Bannon began promoting false conspiracy claims that the election had been stolen and referred to the election as “a mass fraud.”²³

The day before the January 6th attack on the Capitol, Mr. Bannon predicted that “All hell is going to break loose tomorrow.”²⁴ He told the listeners of his radio show:

It’s not going to happen like you think it’s going to happen. OK, it’s going to be quite extraordinarily different. All I can say is, strap in. [. . .] You made this happen and tomorrow it’s game day. So strap in. Let’s get ready.²⁵

He added:

So many people said, “Man, if I was in a revolution, I would be in Washington.” Well, this is your time in history.²⁶

¹⁷ Jeff Mason and Steve Holland, “Trump fired adviser Bannon,” *Reuters*, (Aug. 18, 2017), available at <https://www.reuters.com/article/us-usa-trump-bannon/trump-fired-adviser-bannon-idUSKCN1AY206>.

¹⁸ Daniel Lippman, “Steve Bannon launches radio show and podcast on impeachment,” *Politi-10*, (Oct. 24, 2019), available at <https://www.politi10.com/news/2019/10/24/steve-bannon-radio-show-podcast-impeachment-055167>.

¹⁹ E.g., KUSI Newsroom, “Steve Bannon explains how the Democrats are plotting to steal the 2020 election,” KUSI, (Oct. 1, 2020), available at <https://www.kusi.com/steve-bannon-explains-how-the-democrats-are-plotting-to-steal-the-2020-election>.

²⁰ Bob Woodward and Robert Costa, *Fertile*, (New York: Simon & Schuster, 2021), p. 207.

²¹ *Id.*, pp. 207, 228–234.

²² *Id.*, p. 207.

²³ Rob Kunitz, et al., “Stop the Steal’s massive disinformation campaign connected to Roger Stone,” CNN (Nov. 14, 2020), available at <https://www.cnn.com/2020/11/13/business/stop-the-steal-disinformation-campaign-tnw/index.html>.

²⁴ Aaron Blake, “Who could have predicted the Capitol riot? Plenty of people – including Trump allies,” *Washington Post*, (Jan. 28, 2021), available at <https://www.washingtonpost.com/politics/2021/01/28/who-could-have-predicted-capitol-riots-plenty-people/>.

²⁵ Steve Bannon, “War Room: Pandemic, EP 634 – Tuesday Special (with Maggie VandenBergh, Ben Berquam, and Peter Navarro),” (Jan. 5, 2021), available at <https://rumble.com/vch/pu-634-tuesday-special-w-maggie-vandenbergh-ben-berquam-and-peter-navarro.html>.

²⁶ Aaron Blake, “Who could have predicted the Capitol riot? Plenty of people – including Trump allies,” *Washington Post*, (Jan. 28, 2021), available at <https://www.washingtonpost.com/politics/2021/01/28/who-could-have-predicted-capitol-riots-plenty-people/>.

And:

It's all converging, and now we're on the point of attack tomorrow.²⁷

Public reporting also suggests that Mr. Bannon was among several prominent supporters of efforts to undermine the election results who gathered at the Willard Hotel, two blocks from the White House, on the days surrounding the January 6th attack.²⁸ The group that assembled at the Willard Hotel is reported to have included members of the Trump campaign's legal team (including Rudolph Giuliani and John Eastman), several prominent proponents of false election fraud claims that had been promoted by Mr. Trump (e.g., Russell Ramsland, Jr. and Boris Epshteyn), as well as Roger Stone, who left the hotel with Oath Keeper bodyguards, and campaign spokesman Jason Miller.²⁹ It has been reported that the participants in the meetings at the Willard Hotel discussed plans to stop or delay the January 6th counting of the election results and persuade Members of Congress to block the electoral count.³⁰

Mr. Bannon's statements the day before the January 6th attack, and his association with both the Trump inner circle and outside groups involved in the "Stop the Steal"³¹ events, make his testimony about the Willard Hotel meetings essential to fully understanding and establishing responsibility for the events of January 6th. In addition to the indications noted above regarding Mr. Bannon's role in various activities leading up to January 6th, he also reportedly spoke directly to Mr. Trump on one or more occasions regarding what could or should happen on January 6th.³²

B. Mr. Bannon's refusal to comply with the Select Committee's subpoena for testimony and documents

On September 23, 2021, Chairman THOMPSON signed and transmitted a subpoena, cover letter, and schedule to Mr. Bannon ordering the production of both documents and testimony relevant to the Select Committee's investigation into "important activities that led to and informed the events at the Capitol on January 6, 2021."³³ Chairman THOMPSON's letter identified public reports describing Mr. Bannon's activities and past statements, documenting some of the public information that gave the Select Committee reason to believe Mr. Bannon possesses information about matters within the scope of the Select Committee's inquiry.

The specific documents requested are found in the schedule in the Appendix, Exhibit 1, (pp. 4–5). The schedule included with the subpoena addressed topics including but not limited to Mr.

²⁷*Id.*

²⁸Woodward and Costa, pp. 233–234; Andre J. Ellington, "Steve Bannon Confirms His Involvement in January 6 Insurrection on 'War Room' Podcast," *Newsweek*, (Sept. 22, 2021), available at <https://www.newsweek.com/steve-bannon-confirms-his-involvement-january-6-insurrection-war-room-podcast-1631667>.

²⁹Woodward and Costa, pp. 233–234; Michael Wolff, "Donald Trump's January 6: The view from inside the Oval Office," *New York*, (June 28, 2021), available at <https://nymag.com/intelligencer/article/michael-wolff-landslide-final-days-trump-presidency-excerpt.html>; Seth Abramson (@SethAbramson), Twitter (June 12, 2021, 10:51 a.m.), <https://twitter.com/SethAbramson/status/1403726643722547200/photo/1>.

³⁰Woodward and Costa, p. 238.

³¹There were a number of events organized to take place on January 5th and January 6th at which supporters of President Trump gathered, and made and heard speeches, in support of the position that Congress should not affirm that Joe Biden had won the 270 or more electoral college votes necessary to be elected President.

³²See, e.g., Woodward and Costa, p. 207.

³³See Appendix, Exs. 1, 2.

Bannon's role in planning and promoting the January 6, 2021, rally and march in support of Mr. Trump; Mr. Trump's participation in the rally and march; Mr. Bannon's podcast and its use for promoting the rally and march; and Mr. Bannon's strategic communications with a host of individuals known to be involved with the former President's 2020 election campaign and subsequent efforts to undermine or cast doubt on the results of that election.

The subpoena required Mr. Bannon to produce the requested documents to the Select Committee on October 7, 2021, at 10 a.m. and required Mr. Bannon's presence for the taking of testimony on October 14, 2021, at 10 a.m.³⁴ Mr. Bannon had designated Robert J. Costello as his attorney for the purposes of the Select Committee's inquiry, and Mr. Costello accepted service of the subpoena on behalf of Mr. Bannon on September 24, 2021.³⁵

On October 7, 2021, at 10 a.m., at the designated location identified in the subpoena, Mr. Bannon failed to appear and produce documents. Instead, over 7 hours later, Mr. Costello sent a letter to Chairman THOMPSON via email at 5:04 p.m. reinforcing Mr. Bannon's refusal to comply.

Mr. Costello's letter cited an October 6, 2021, letter from former President Trump's counsel Justin Clark to Mr. Costello that purportedly instructed Mr. Bannon to "invoke any immunities and privileges he may have from compelled testimony," "not produce any documents concerning privileged material," and "not provide any testimony concerning privileged material[.]"³⁶ Mr. Costello's letter then asserted that Mr. Bannon was "legally unable to comply," with the subpoena for "documents or testimony," claiming to rely on the instructions of Mr. Trump to not disclose privileged information.³⁷ The two-page letter contained only conclusory statements, no legal analysis, and approximately half of it purported to quote from the letter of October 6, 2021, from the counsel to Mr. Trump.

On October 8, 2021, Chairman THOMPSON responded to Mr. Costello's October 7, 2021, letter.³⁸ He said that Mr. Trump had not communicated an invocation of privilege either formally or informally to the Select Committee. He further stated that, regardless, the information the Select Committee seeks from Mr. Bannon concerns his actions as a private citizen and involves a range of subjects not even conceivably reached by any executive privilege assertion. Chairman THOMPSON also noted that—even assuming Mr. Bannon were correct that a privilege applied to his documents and testimony and Mr. Trump had formally invoked a privilege through the long-standing practice of consultation with the current President (which is not the case)—Mr. Bannon does not enjoy anything like the type of absolute immunity his attorney suggested would insulate Mr. Bannon from an obligation to comply with the Select Committee's subpoena. Again, there is no conceivable legal claim to support such an assertion.

³⁴ See Appendix, Ex. 1.
³⁵ See Appendix, Ex. 2 (Emails between Select Committee staff and Robert J. Costello (Sept. 23–24, 2021)).

³⁶ See Appendix, Ex. 3 (Letter from Robert J. Costello to Select Committee staff (Oct. 7, 2021)).

³⁷ *Id.*
³⁸ See Appendix, Ex. 4 (Letter from Chairman BENNIE G. THOMPSON to Robert J. Costello (Oct. 8, 2021)).

The Chairman underscored that Mr. Bannon remained obligated to produce documents and testimony about all non-privileged material that was responsive to the subpoena, was expected to produce a privilege log identifying any documents being withheld based on any specific privilege claims, and that the Select Committee expected Mr. Bannon to appear at the deposition on October 14th and state on the record any privilege concerns raised by specific questions. As made clear by the deposition rules provided to Mr. Bannon by the Select Committee, under House deposition regulation 3, Mr. Bannon may be accompanied at the deposition by a personal, nongovernmental counsel to advise him of his rights.⁴⁰

The Chairman concluded by saying that Mr. Bannon was therefore not in compliance with the Chairman's duly issued subpoena for documents, and that the Select Committee would view refusal to produce documents and refusal to appear at the October 14th deposition as willful non-compliance with the subpoena. The Chairman warned that this willful non-compliance would put Mr. Bannon in jeopardy of a vote to refer him to the House to consider a criminal contempt referral to a U.S. Attorney pursuant to 2 U.S.C. §§ 192 and 194.⁴¹

On October 13, 2021, at approximately 12:35 p.m., Select Committee staff emailed Mr. Costello to discuss logistics for the deposition at which Mr. Bannon was compelled to appear on October 14, 2021, at 10 a.m. Approximately an hour later, Select Committee staff and Mr. Costello spoke on the telephone, during which Mr. Costello informed the Select Committee that Mr. Bannon would not appear the next day, and that a letter to that effect was forthcoming. Mr. Costello indicated that he was in contact with Mr. Trump's attorney, and he had informed Mr. Trump's attorney of the Select Committee's explanation of the deficiencies in Mr. Bannon's and Mr. Trump's justifications for Mr. Bannon's defiance of the subpoena.

On that call, Mr. Costello represented to the Select Committee that he had asked Mr. Trump's counsel to identify, with specificity, communications for which executive privilege would apply. Later that day, Mr. Costello transmitted a response to Chairman THOMPSON's October 8, 2021, letter. In that letter, Mr. Costello reiterated his position that Mr. Bannon's refusal to comply with the Select Committee subpoena was based on the former President's "executive and other privileges."⁴² Mr. Costello claimed that President Trump's counsel had "exercis[ed] his executive privilege" and "directed Mr. Bannon not to produce documents or testify until the issue of executive privilege is resolved."⁴³ He further stated that Mr. Bannon would refuse to produce any documents or appear for testimony until after a court had ruled on, or former President Trump and the Select Committee reached an agreement on, the matter of executive privilege that the former President had never actually communicated to the Select Committee. In defiance of the clear instructions by the Select Committee to appear at the deposi-

⁴⁰U.S. House of Representatives, "117th Congress Regulations for Use of Deposition Authority," 167 Cong. Rec. (Jan. 4, 2021), p. H41.

⁴¹See Appendix, Ex. 4 (Letter from Chairman BENNIE G. THOMPSON to Robert J. Costello (Oct. 8, 2021)).

⁴²See Appendix, Ex. 5 (Letter from Robert J. Costello to Chairman BENNIE G. THOMPSON (Oct. 13, 2021)).

⁴³*Id.*

tion and state any privilege concerns as they applied to specific questions, Mr. Bannon refused to appear to make any objections in person. Further, he refused to engage at all with the specifics of the document demands, including failing to provide a privilege log identifying any privilege claims regarding specific documents.

On October 14, 2021, at 10 a.m., Mr. Bannon failed to appear at the designated location to provide testimony relevant to the Select Committee's inquiry in response to questions posed, as was required by the subpoena.⁴³

At 2:05 p.m. on October 15, 2021, Chairman THOMPSON sent a letter to Mr. Costello noting that Mr. Bannon had not even attempted to provide the Select Committee any explanation for refusing to comply with the Select Committee's demand for documents and testimony on a range of subjects that do not involve communications with the former President. The Chairman also reiterated that Mr. Bannon does not enjoy absolute immunity from testifying before the Select Committee. The Chairman reminded Mr. Costello that the Select Committee views Mr. Bannon's conduct as willful non-compliance with the subpoena. He notified Mr. Costello that, accordingly, the Select Committee would meet on October 19, 2021, to consider a criminal contempt referral for Mr. Bannon, and invited Mr. Costello to submit any written materials he believed the Select Committee should consider in its deliberations on this referral.

C. Mr. Bannon's purported basis for non-compliance is wholly without merit

Mr. Bannon has relied on no legal authority to support his refusal to comply in any fashion with the subpoena. Mr. Bannon's refusal to comply with the subpoena is ostensibly based on his decision to "honor [former President Trump's] invocation of executive privilege" and instruction that, "to the fullest extent permitted by law," Mr. Bannon "invoke any immunities and privileges he may have from compelled testimony," "not produce any documents concerning privileged material," and "not provide any testimony concerning privileged material."⁴⁴ Far from being "permitted by law," Mr. Bannon's conduct in response to the Select Committee's subpoena constitutes a violation of the contempt of Congress statutory provisions.

1. Executive privilege has not been invoked

Mr. Trump has had no communication with the Select Committee. In an October 7th letter to the Select Committee, Mr. Bannon's attorney referred to purported correspondence from Mr. Trump's attorney, Justin Clark, in which Mr. Clark asserted that the Select Committee subpoena seeks information that is "potentially protected from disclosure by executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges."⁴⁵ According to Mr. Bannon's attorney, Mr. Clark also stated that, "President Trump is prepared to defend these fundamental privileges in court."⁴⁶

⁴³ See Appendix.

⁴⁴ See Appendix, Ex. 8 (Letter from Robert J. Costello to Select Committee staff (Oct. 7, 2021)).

⁴⁵ *Id.*

⁴⁶ *Id.*

In *United States v. Reynolds*, 345 U.S. 1, 7–8 (1953), the Supreme Court held that executive privilege:

[B]elongs to the Government and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer.⁴⁷ Here, the Select Committee has not been provided with any formal invocation of executive privilege by the President,⁴⁸ the former President or any other employee of the executive branch. Mr. Costello's October 13th letter merely states that the attorney for former President Trump had informed him that "President Trump is exercising his executive privilege."⁴⁹ This third-hand, non-specific assertion of privilege, without any description of the documents or testimony over which privilege is claimed, is insufficient to activate a claim of executive privilege.

2. Even assuming an invocation of executive privilege (which is not justified here), assertion of privilege could not bar the Select Committee from lawfully obtaining the documents and testimony it seeks from Mr. Bannon

The Select Committee seeks information from Mr. Bannon on a wide range of subjects that it is inconceivable executive privilege would reach. Mr. Bannon was a private citizen during the relevant time period and the testimony and documents the Select Committee is demanding do not concern discussion of official government matters with the President and his immediate advisors. The law is clear that executive privilege does not extend to discussions between the President and private citizens relating to non-governmental business or among private citizens. In *United States v. Nixon*, 418 U.S. 683, 708 (1974), the Supreme Court recognized a qualified, presumptive privilege for presidential communications. The scope of the so-called "presidential communications privilege" was further defined by the Court to apply only to "communications in performance of [a President's] responsibilities of his office and made in the process of shaping policies and making decisions."⁵⁰

In *In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997), the DC Circuit extended the presidential communications privilege to "communications authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate." The court stressed that the privilege only applies to communications intended to advise the

⁴⁷ See also *United States v. Burr*, 25 F. Cas. 187, 192 (CCD Va. 1807) (ruling that President Jefferson had to personally identify the passages he deemed confidential and could not leave this determination to the U.S. Attorney). In *Reynolds*, the Court addressed the "state secrets privilege," which can be viewed as a subset of executive privilege.

⁴⁸ It is worth noting that President Biden has not invoked executive privilege with respect to the testimony or documents of Mr. Bannon. The Supreme Court has held that a former President may assert executive privilege on his own, but his claim should be given less weight than that of an incumbent President. *Nixon v. Administrator of General Services*, 433 U.S. 425, 451 (1977) (the "expectation of the confidentiality of executive communications thus has always been limited and subject to erosion over time after an administration leaves office"). The Supreme Court in *Nixon v. GSA* made note of the fact that neither President Ford nor President Carter supported former President Nixon's assertion of privilege, which, the Court said, "detracts from the weight of his contention [that the disclosure of the information at issue] impermissibly intrudes into the executive function and the needs of the Executive Branch." *Id.*, p. 449.

⁴⁹ *Nixon v. Administrator of General Services*, 433 U.S. at 449 (internal citations and quotations omitted).

President “on official government matters.”⁵⁰ In *Judicial Watch, Inc. v. Department of Justice*, 365 F.3d 1108, 1123 (D.C. Cir. 2004), the court reaffirmed that the presidential communications privilege applies only to documents “solicited and received by the President or his immediate advisers in the Office of the President.” Relying on *In re Sealed Case* and the principle that “the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the confidentiality of the President’s decision-making process is adequately protected,”⁵¹ the court refused to extend the privilege even to executive branch employees whose sole function was to provide advice to the President in the performance of a “quintessential and nondelegable Presidential power.”⁵²

Here, neither Mr. Bannon nor former President Trump has asserted that Mr. Bannon’s testimony would reveal communications involving the President or members of his immediate White House staff regarding the performance of the President’s responsibilities of his office. At no point during the time period under investigation by the Select Committee was Mr. Bannon a government employee, much less a key White House adviser in the Office of the President. Moreover, the matters under review by the Select Committee concern efforts to overturn legitimate election results and an attack on our democratic institutions. Communications regarding these subjects (or any other matter related to the presidential campaign), by definition, would not constitute advice on “official government matters” that could be shielded by executive privilege. In any event, any confidentiality interest in such communications would be far outweighed by the oversight needs for this information that are at stake in the Select Committee’s investigation.

In sum: In this instance, there is no reasonable argument that Mr. Bannon’s communications with the President regarding January 6th are the type of matters on which privilege can be asserted. Also, the Select Committee is confident that no executive privilege assertion would bar Mr. Bannon’s testimony regarding his communications directly with the President regarding January 6th—because the privilege is qualified and could be overcome by an appropriate showing of need. Again, there is no conceivable assertion that privilege could apply to other information sought that does not constitute communications with Mr. Trump during his presidency. Beyond communications between Mr. Bannon and Mr. Trump, the Select Committee seeks documents and testimony from Mr. Bannon regarding his own actions and interactions with other private citizens relating to the events of January 6th. For example, the subpoena to Mr. Bannon includes requests for documents related to many other matters, including:⁵³

- His presence, purpose, statements, and activities at a meeting with Members of Congress at the Willard Hotel on January 5, 2021, or the presence, purpose, statements, or activities of others in attendance related to that meeting.
- Anyone with whom he communicated by any means with respect to any aspect of the planning, objectives, con-

⁵⁰ *Id.* (Italics added.)

⁵¹ *Id.*, p. 1116.

⁵² *Id.*, p. 1111. See also *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 100 (D.D.C. 2008) (privilege claimants acknowledged that executive privilege applies only to “a very small cadre of senior advisers”).

⁵³ See Appendix, Ex. 1.

duct, or participation in the January 6, 2021, rally, including but not limited to Boris Epshteyn.

- Anyone with whom he communicated with respect to efforts, plans, or proposals to contest the 2020 presidential election results or delay, influence, or impeded the electoral count, including but not limited to communications with Boris Epshteyn, Kashyap Patel, and Ezra Cohen-Watnick.

- All public relations, advertising, or other communications efforts to persuade Americans that the election was stolen.

- The January 6, 2021, rally on The Mall and Capitol grounds in Washington, DC, in support of President Donald J. Trump and opposition to the counting of the results of the 2020 presidential election, including its permitting, planning, objectives, financing, and conduct, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.

- The financing or fundraising to assist any individual's or organization's travel to or accommodation in Washington, DC, to attend or participate in the January 6, 2021, rally.

- The "War Room" podcast, insofar as at any time he communicated through it statements referring or relating to the January 6, 2021, rally, including all statements concerning its planning, objectives, purpose, organization, message, or sponsorship.

- The organization or group named "March for Trump" and its activities relating to the January 6, 2021, rally, including any communications Mr. Bannon had with any officer or member of "March for Trump" relating in any way to the planning, objectives, organization, message, sponsorship, and participation in the January 6, 2021, rally.

No colorable claim of executive privilege could possibly be made with respect to documents or testimony related to these and other matters sought by the subpoena, or any other topics that were not connected to official decisionmaking by the President.

3. *Mr. Bannon is not entitled to absolute immunity*

Mr. Bannon has refused to provide any responsive documents or appear for a deposition based on his asserted reliance on Mr. Trump's purported invocation of executive privilege. However, even if Mr. Trump had invoked executive privilege, and even if certain testimony or documents would fall within that privilege, Mr. Bannon would not be immune from compelled testimony before the Select Committee.

The law is clear that even senior White House aides who advise the President on official government business are not immune from compelled congressional process.⁵⁴ To the extent there has been a

⁵⁴ See also *Committee on the Judiciary v. McGahn*, 415 F.Supp.3d 148, 214 (D.D.C. 2019) (and subsequent history) ("To make the point as plain as possible, it is clear to this Court for the reasons explained above that, with respect to senior-level presidential aides, absolute immunity from compelled congressional process simply does not exist."); *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 93, 101 (D.D.C. 2008) (holding that White House counsel may not refuse

formal invocation of executive privilege by the Office of the President, and in the unlikely event that testimony by Mr. Bannon relates to information covered by that privilege, Mr. Bannon was nonetheless required to appear before the Select Committee to provide testimony and invoke executive privilege where appropriate. If there are responsive documents that Mr. Bannon claims include privileged information, he was required to provide the Select Committee with a privilege log that “identifies and describes the material in a manner ‘sufficient to enable resolution of any privilege claims.’”⁶⁵ Mr. Bannon did neither. He should be held in contempt.

D. Precedent supports the Select Committee’s position to proceed with holding Mr. Bannon in contempt

An individual who fails or refuses to comply with a House subpoena may be cited for contempt of Congress.⁶⁶ Pursuant to 2 U.S.C. § 192, the willful refusal to comply with a congressional subpoena is punishable by a fine of up to \$100,000 and imprisonment for up to 1 year.⁶⁷ A committee may vote to seek a contempt citation against a recalcitrant witness. This action is then reported to the House. If a resolution to that end is adopted by the House, the matter is referred to a U.S. Attorney, who has a duty to refer the matter to a grand jury for an indictment.⁶⁸

In his October 8th letter to Mr. Bannon’s counsel, the Chairman of the Select Committee advised Mr. Bannon that his claims of executive privilege were not well-founded and did not absolve him of his obligation to produce documents and testify in deposition. The Chairman made clear that the Select Committee expected Mr. Bannon to appear for his scheduled deposition on October 14th and produce the requested documents at that time. The Chairman warned Mr. Bannon that his continued non-compliance would put him in jeopardy of a vote to refer him to the House to consider a criminal contempt referral. Mr. Bannon’s failure to appear for deposition or produce responsive documents in the face of this clear advisement and warning by the Chairman constitutes a willful failure to comply with the subpoena.

SELECT COMMITTEE CONSIDERATION

[. . .]

SELECT COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Select Committee to list the recorded votes during consideration of this Report:

[. . .]

to testify based on direction from the President that testimony will implicate executive privilege).

⁶⁵ See *Comm. on Oversight and Gov’t Reform v. Holder*, 2014 U.S. Dist. LEXIS 200278 at *7 (D.D.C., Aug. 20, 2014) (quoting *Miers*, 558 F. Supp. 2d at 107).

⁶⁶ *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 505, 515 (1975).

⁶⁷ See *supra* note 6. The prison term for this offense makes it a Class A misdemeanor. 18 U.S.C. § 3659(a)(6). By that classification, the penalty for contempt of Congress specified in 2 U.S.C. § 192 increased from \$1,000 to \$100,000. 18 U.S.C. § 3671(b)(5).

⁶⁸ See 2 U.S.C. § 192.

SELECT COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII, the Select Committee advises that the oversight findings and recommendations of the Select Committee are incorporated in the descriptive portions of this Report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Select Committee finds the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, to be inapplicable to this Report. Accordingly, the Select Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the Report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the objective of this Report is to enforce the Select Committee's authority to investigate the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate problems and to recommend corrective laws, policies, procedures, rules, or regulations; and to enforce the Select Committee's subpoena authority found in section 5(c)(4) of House Resolution 503.

APPENDIX

The official transcript that memorialized Mr. Bannon's failure to appear at his deposition as ordered by subpoena, along with exhibits included in that record, is as follows:

SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, DC

DEPOSITION OF: STEPHEN K. BANNON (NO-SHOW)

THURSDAY, OCTOBER 14, 2021

WASHINGTON, DC

The deposition in the above matter was held in * * * * commencing at 10:00 a.m.

PRESENT: Representative SCHIFF.

APPEARANCES:

FOR THE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

* * * * *

Sean Tonelli, Senior Investigative Counsel

* * * * *

* * * * *

* * * * *

* * * * *

Mr. TONOLLI. So we are on the record. Today is October 14, 2021. The time is 10:00 a.m. We are convened in * * * * for the deposition of Stephen K. Bannon to be conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol.

My name is Sean Tonelli. I am the designated Select Committee staff counsel for this proceeding. And I'd ask everyone else to please go around the room and introduce themselves.

* * * * *

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* * * * *

Mr. TONOLLI. For the record, it is 10:01 a.m., and Mr. Bannon is not present. The person transcribing this proceeding is the House stenographer and notary public authorized to administer oaths.

On September 23, 2021, Chairman BENNIE THOMPSON issued a subpoena to Mr. Bannon both to produce documents by October 7, 2021, and to testify at a deposition today, October 14, 2021, at 10:00 a.m.

The subpoena is in connection with the Select Committee's investigation into the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to recommend to the House and its relevant committees corrective laws, policies, procedures, rules, or regulations.

This inquiry includes examination of how various individuals, to include Mr. Bannon, and entities coordinated their activities leading up to the events of January 6, 2021. Mr. Bannon has not produced any documents or appeared today to testify.

I will mark as exhibit 1 and enter into the record the Select Committee's subpoena to Mr. Bannon, included with which are the materials that accompanied the subpoena, namely, a letter from the chairman, a document scheduled with accompanying production instructions, and a copy of the deposition rules.

SUBPOENA
BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA

Stephen K. Stanton,
 via Robert Costello, Esq., Davidson, Hatcher and Cline, LLP

To _____

You are hereby commanded to be and appear before the
Served Committee to Investigate the January 6th Attack on the United States Capitol

of the House of Representatives of the United States at the place, date, and time specified below:

☒ to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee, and you are not to depart without leave of said committee or subcommittee.

Place of production: _____
 Date: October 7, 2021 Time: 10:00 a.m.

☒ to testify at a deposition touching matters of inquiry committed to said committee or subcommittee, and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
 Date: October 14, 2021 Time: 10:00 a.m.

☐ to testify at a hearing touching matters of inquiry committed to said committee or subcommittee, and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
 Date: _____ Time: _____

To, my authorized officer or the United States Marshal Service _____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
 the city of Washington, D.C. this 23rd day of September, 2021.

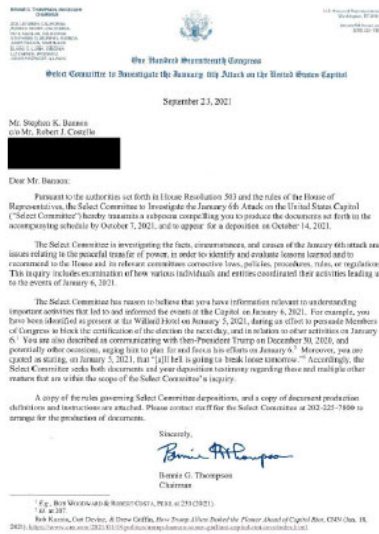
 Clerk

 Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Stephen R. Bannon on Richard Cordell, Esq., Davidson, Horcher and Cline, LLP	
Address [REDACTED]	
[REDACTED]	
Inforce On: Sub C Committee to Investigate the January 6th Attack on the United States Capitol	
U.S. House of Representatives 17th Congress	

Served by (print name)	[REDACTED]
Title	[REDACTED]
Manner of service	[REDACTED]
Date	1/23/21
Signature of Server	[REDACTED]
Address	[REDACTED]



Mr. Stephen K. Bannon
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SCHEDULE

In accordance with the attached Definitions and Instructions, you, Stephen K. Bannon, are hereby required to produce all documents and communications in your possession, custody, and control—including any such documents or communications stored or located on personal devices (e.g., personal computers, cellular phones, tablets, etc.), in personal or campaign accounts, and/or on personal or campaign applications (e.g., email accounts, contact lists, calendar entries, etc.)—referring or relating to, or referring or relating to the following items. If no date range is specified below, the applicable dates are for the time period April 1, 2020-present:

1. The January 6, 2021, rally on the mall and Capitol grounds in Washington, D.C., in support of President Donald J. Trump and opposition to certification of the results of the 2020 presidential election, including any permitting, planning, objectives, financing, and outreach, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.
2. Then-President Trump's participation in the January 6, 2021, rally, including any communications with President Trump or any paid or unpaid attorney, advisor, aide, or assistant to President Trump relating to the nature, content, or outcome of President Trump's intended or actual remarks to those attending the January 6, 2021, rally.
3. Communications referring or relating to the nature, planning, conduct, message, content, or participation in the January 6, 2021, rally between or among any person who, during the administration of President Donald J. Trump, worked in the White House complex, including any employee or detainee.
4. Documents or other materials referring or relating to the financing or fundraising to assist any individual or organization's travel to or accommodation in Washington, D.C., to attend or participate in the January 6, 2021, rally.
5. "The 'War Room' podcast," insofar as at any time you communicated through it statements referring or relating to efforts to contest the election results, including planning for the January 6, 2021, rally, including all statements concerning its planning, objectives, purpose, organization, message, or sponsorship.
6. The organization or group named "March for Trump" and its activities relating to the January 6, 2021, rally, including any communications you had with any officer or member of "March for Trump" relating to any way to the planning, objectives, organization, message, sponsorship, and participation in the January 6, 2021, rally.
7. Your person, purpose, statements, and activities at a meeting at the Willard Hotel on January 5, 2021, or the presence, purpose, interests, or activities of others in attendance, related to that meeting.
8. Your communications with President Donald J. Trump concerning events on January 6, 2021, including but not limited to communications on December 30, 2020.
9. Your communications with President Donald J. Trump between November 3 and January 20, 2021, concerning efforts to contest the election results or delay or impede the electoral count.
10. Anyone with whom you communicated by any means with respect to any aspect of the planning, objectives, conduct, or participation in the January 6, 2021, rally, including but not limited to Boris Epshteyn, Kashyap Patel, and Boris Cohen-Waisak.

Mr. Stephen K. Bannon
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11. Anyone with whom you communicated by any means with respect to efforts, plans, or proposals to contest the 2020 Presidential election results or delay, influence, or impede the electoral count, including but not limited to communications with Boris Johnson, Kashyap Patel, and Erin Cohen-Watnick.
12. All public relations, advertising, or other communications efforts to persuade Americans that the election was stolen or to attend the rally on January 6.
13. The role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.
14. Any communication with any employees of President Trump's 2020 presidential campaign, the Republican National Committee, or any Trump Administration personnel including appointees, employees, and interns, about any of the foregoing topics.
15. Any communication regarding any of the foregoing topics with Proud Boys, Oak Keegan, Thom Perencek, and Alex Jones.
16. Any communication with Representative Scott Perry and/or other Members of Congress about any of the foregoing topics.
17. Any communication with Rudy Giuliani, John Eastman, Michael Flynn, Jenna Ellis, or Sydney Powell about any of the foregoing topics.

DOCUMENT PRODUCTION DEFINITIONS AND INSTRUCTIONS

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Committee").
3. In the event that any entity, organization, or individual denied in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in a portable electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper production. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes, but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).
5. Electronic document productions should be prepared according to the following standards:
 - a. If the production is completed through a series of multiple partial productions, file names and file order in all hard files should match.
 - b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:
 BEGINDOC, ENDDOC, TEXT, HEADATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, REDUCTIONTYPE, DATE, TIME, SENTEDATE, SENTTIME, BEGINDATE, REGENTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATETIMECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSREHEADER, SATITLELINK, INTITLEPATH, ENCRYPTED, REGATTACH

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard-drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
10. The pendency of or potential for litigation shall not be a basis to withhold any information.
11. In accordance with 5 U.S.C. § 552(b), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
12. Pursuant to 5 U.S.C. § 552a(h)(9), the Privacy Act shall not be a basis for withholding information.
13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.
14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipient), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify when the responsive document was now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).
16. If a date or other descriptive detail set forth in this request referring to a document

is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the statute date shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how transmitted (e.g., on a social media platform) and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, messages, press releases, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of correspondence, subpoenas (all, moving or other into-office or from-office communications, bulletins, printed matter, computer printouts, computer or mobile device screenshots, screen captures, images, motion, transcripts, diaries, analyses, references, memoranda, or notes, bills, answers, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfilm, microfiche, videotape, recordings and media (tapes), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notations and a part of the original text is to be considered a separate document. A dual or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, e-mail, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, messaging application, through a social media or online platform, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural numbers, and vice versa. The masculine includes the feminine and neutral genders.
4. The term "including" shall be construed broadly to mean "including, but not limited to."
5. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, operations, or other legal business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.
7. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, includes, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, assignee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee or subcontractor, or any other type of service provider.
9. The term "individual" means all natural persons and all persons or entities acting on their behalf.

5. The individual administering the oath, and those that accompany, shall certify on the certificate that the witness was not sworn. The administering shall certify that the time, date, and place of the testimony, and the statement shall be that, together with any demands for recording, with the clerk of the court in Washington, DC. If any of these shall be considered to have been taken in Washington, DC, as well as the location where the witness was sworn, the clerk of the court shall be notified of the location of the witness. The clerk and the recording officer shall be notified with a copy of the transcript of the testimony at the same time.

[illegible]

3. **Members participating remotely** in a conference providing input to the discussion at different times (flexible, not necessarily in real time). This may be done via a computer-based or video teleconference, or through the number ability to dial in/out to an online (upload or download) system on a web site.

4. The chair shall make a good faith effort to provide every member experiencing accessibility issues an opportunity to participate fully in the proceedings, subject to considerations of time and space.

Mr. TONOLLI: I will mark as exhibit 2 and enter into the record an email exchange between *** and Robert Costello, Mr. Bannon's attorney.

From: Costello, Robert J [REDACTED]
 Sent: Friday, September 24, 2021 1:24 PM
 To: [REDACTED]
 Subject: Re: subpoena to Mr. Bannon

In response to your email of yesterday, this will advise you that I have been authorized by Steve Bannon to accept service of the subpoenas from the House Select Committee on his behalf.
 Very truly yours,
 Robert J. Costello

Sent from my iPhone

On Sep 23, 2021, at 6:38 PM, [REDACTED] wrote:

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

Dear Mr. Costello,

I am following up on our conversation today in which you confirmed that you represent Stephen Bannon. I understand that you are checking with Mr. Bannon regarding whether he will authorize you to accept service of a subpoena on his behalf. The Select Committee to Investigate the January 6th Attack on the United States Capitol is today issuing the attached subpoena to Mr. Bannon for his testimony and the production of documents to the Committee. In the event that you will accept service, I am attaching to this email the subpoena, along with a letter from Chairman Bonnie Thompson, a document schedule with accompanying production instructions, and a copy of the deposition rules.

Please confirm whether you will accept service of this subpoena on Mr. Bannon's behalf.

Thank you.

[REDACTED]

[REDACTED]

[REDACTED]

"Benson, Stephen E. Subpoena 9.23.21 attachments.pdf"

IMPORTANT NOTICE-Beeware of Other Fraud. You should never wire money to any bank account that our office provides to you via email without first speaking with our office. Further, do not accept or make wiring instructions from anyone else without voice verification from a known employee of our office. Even if an email looks like it has come from this office or someone involved in your transaction, do not act until you have personally contacted the office to verify the information before wiring any money. Be particularly wary of any request to change wiring instructions you already received.

STATEMENT OF CONFIDENTIALITY
The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify us immediately by email reply to sender or by telephone to Davidoff Hatcher & Cronin LLP at (800) 795-2842, ext. 3384, and destroy all copies of this message and any attachments.

RS DISCLOSURE NOTICE
In accordance with Internal Revenue Service Circular 230, we inform you that any discussion of a Federal tax issue contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any recipient for the purpose of (1) avoiding penalties that may be imposed on the recipient under United States Federal tax laws, or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Mr. TONOLLI. On September 23, 2021, * * * * * emailed Mr. Costello the subpoena to Mr. Bannon and the accompanying materials included in exhibit 1 and asked whether Mr. Costello was authorized to accept service of the subpoena on Mr. Bannon's behalf.

Mr. Costello replied to * * * * * on September 24, 2021, that he was authorized to accept service of the subpoena on Mr. Bannon's behalf.

I will mark as exhibit 3 and enter into the record a letter Mr. Costello sent to * * * * * on October 7, 2021.

DHC **DAVIDOFF HUTCHER & CITRON LLP**
ATTORNEYS AT LAW

RM OFFICE
1000 15th St NW
Washington, DC 20004
Tel: 202-462-1000
Fax: 202-462-1001
www.dhclaw.com

RM OFFICE
1000 15th St NW
Washington, DC 20004
Tel: 202-462-1000
Fax: 202-462-1001
www.dhclaw.com

October 7, 2021

Re: The Subpoena for Stephen K. Bannon dated September 23, 2021

Dear [REDACTED]:

I write today on behalf of Stephen K. Bannon with respect to the above referenced subpoena, which I accepted on behalf of Mr. Bannon. On the afternoon of October 6, 2021, I received a letter from Justin Clark, as counsel for then President of the United States Donald J. Trump. That letter references the subpoena that your Committee served upon Mr. Bannon, and notes that the subpoena:

"seeks records and testimony purportedly related to the events of January 6th, 2021, including but not limited to information which is potentially protected from disclosure by executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges. President Trump is prepared to defend these fundamental privileges in court.

Therefore, to the fullest extent permitted by law, President Trump instructs Mr. Bannon to: (a) where appropriate, invoke any immunities and privileges he may have from compelled testimony in response to the Subpoena; (b) not produce any documents concerning privileged material in response to the Subpoena; and (c) not provide any testimony concerning privileged material in response to the Subpoena."

It is therefore clear to us that since the executive privileges belong to President Trump, and he has, through his counsel, announced his intention to assert

DAVIDOFF HUTCHER & CITRON LLP

October 7, 2021
Page 2

those executive privileges enumerated above, we must accept his direction and honor his invocation of executive privilege. As such, until these issues are resolved, we are unable to respond to your request for documents and testimony.

We will comply with the directions of the courts, when and if they rule on these claims of both executive and attorney-client privileges. Since these privileges belong to President Trump and not to Mr. Bannon, until these issues are resolved, Mr. Bannon is legally unable to comply with your subpoena requests for documents and testimony.

Very truly yours,

/s/ Robert J. Costello

RJC:mc
None

Mr. TONOLLI. In sum and substance, the letter states that Mr. Bannon is, "legally unable to comply with your subpoena requests for documents and testimony." Because President Trump's attorney informed Mr. Costello by letter, dated October 6, 2021, that President Trump is invoking executive privilege, "to the fullest extent permitted by law," and instructing Mr. Bannon not to provide documents or testimony, "concerning privileged material," in response to the Select Committee's subpoena.

I will mark as exhibit 4 and enter into the record a letter that Chairman THOMPSON sent to Mr. Costello in response on October 8, 2021.

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
AND CIVIL LIBERTIES
1000 BENTLEY BUILDING
WASHINGTON, D.C. 20540
202-225-4400
www.house.gov/judiciary



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1000 BENTLEY BUILDING
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202-225-4400
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One Hundred Nineteenth Congress
Select Committee to Investigate the January 6th Attack on the United States Capitol

October 8, 2021

Mr. Robert J. Costello
Davidoff Heller & Cross LLP
[REDACTED]

Dear Mr. Costello,

I write in response to your October 7, 2021 letter which states that your client, Stephen Bannon, is "legally unable to comply" with the September 23, 2021 subpoena (the "Subpoena") issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee"). Your letter relies on an apparent instruction from former President Donald Trump that appears limited to requesting that Mr. Bannon not disclose privileged information. Despite this limited instruction, your letter takes the inappropriate position that Mr. Bannon will not comply with any request for information or testimony sought by the Select Committee. Moreover, Mr. Trump's stated "intention to assert these executive privileges" that may or may not belong to him, does not provide a legal basis for Mr. Bannon's refusal to comply with the Subpoena.

You accepted service of the Subpoena for documents and testimony on Mr. Bannon's behalf on September 24, 2021. The Subpoena requested that, by October 7, 2021 at 10:00 a.m., Mr. Bannon produce certain documents and other records referring or relating to the matters described in the Subpoena's schedule. All the requested documents relate directly to the inquiry being conducted by the Select Committee, serve a legitimate legislative purpose, and are within the scope of the authority expressly delegated to the Select Committee pursuant to House Resolution 913. In the letter accompanying the Subpoena, the Select Committee set forth the basis for its determination that the documents and records sought by the Subpoena and Mr. Bannon's deposition testimony are of critical importance to the issues being investigated by the Select Committee.

Your letter indicates that the sole basis for defiance of the Subpoena is Mr. Trump's "direction" to your client and his decision to "honor [Mr. Trump's] invocation of executive privileges." That position has no basis in law and your letter does not cite any statute, case law, or other legal precedent for support.

First, virtually all the documents and testimony sought by the Subpoena concern Mr. Bannon's actions as a private citizen and involve a broad range of subjects that are not covered by executive privilege. You have provided no basis for Mr. Bannon's refusal to comply with

Mr. Robert J. Contino
Page 2

these portions of the Subpoena not covered by any privilege. Furthermore, blanket assertions of the deliberative process and attorney-client privileges, such as those typically requested by Mr. Trump, have been rejected by courts as “untenable” even when—unlike the situation with Mr. Bannon—the subpoena recipient is an Executive Branch agency. *See Cohen, on Oversight and Gov’t Reform v. Holder*, 2014 WL 13602665, at *2 (D.D.C. 2014) (rejecting DOJ’s assertion of deliberative process privilege on all documents after a particular date and noting that the “Attorney General has not cited any authority that would justify this sort of blanket approach”).

Second, the Select Committee has not received any assertion, formal or otherwise, of any privilege from Mr. Trump. Even assuming that, as a former President, Mr. Trump is permitted to formally invoke executive privilege, he has not done so. At most, Mr. Trump has “announced his intention to assert those executive privileges.” The Select Committee is not aware of any legal authority, and your letter cites none, holding that the mere intention to assert a privilege absolves a subpoena recipient of his duty to comply.

Third, your letter indicates that Mr. Trump has requested that your client “to the fullest extent permitted by law ... not provide any testimony concerning privileged material in response to the Subpoena.” Even if your client had been a senior aide to the President during the time period covered by the contemplated testimony, which he was most assuredly not, he is not permitted by law to the type of immunity you suggest that Mr. Trump has requested to assert. To the contrary, every court that has considered the absolute immunity Mr. Trump alleges to have rejected it. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Cohen, on the Judiciary v. Mize*, 558 F. Supp. 2d 53, 195 (D.D.C. 2008) (rejecting former White House counsel’s assertion of absolute immunity from compelled congressional process); *Id.* (noting that even the most senior Presidential advisors may not resist a congressional subpoena “based solely on their proximity to the President,” *Id.* at 101 (quoting *Harlow*, 457 U.S. at 810)). If there is no absolute immunity for senior Presidential advisors, then there certainly can be no such immunity for private citizens, such as Mr. Bannon, who occasionally communicate with the President on non-official, non-governmental, or campaign-related matters.

Rejection of any purported privilege assertion by Mr. Trump, Mr. Bannon has an ongoing obligation to produce documents to the Select Committee. Accordingly, please produce all responsive documents and materials identified in the Subpoena. Should Mr. Bannon seek to withhold specific responsive documents, consistent with the Subpoena instructions, he must provide the Select Committee with a privilege log that “identifies and describes the material in a manner ‘sufficient to enable resolution of any privilege claims.’” *See Cohen, on Oversight*, 2014 WL 12602665 at *2 (quoting *Mize*, 558 F. Supp. 2d at 107). Such a privilege log should, at a minimum, provide the author(s) and recipient(s), indicate the general subject matter of each document being withheld, and the specific basis for withholding it.

¹ This also means noting that the court in *Herr* rejected the Ryege White House Counsel’s claim of absolute immunity from congressional testimony even though the sitting President had formally invoked executive privilege. *Id.* at 62.

Mr. Robert J. Conello
Page 3

Finally, the Select Committee expects Mr. Borman's appearance at the time and place designated in the Subpoena for a deposition and respond fully to questions by the Select Committee. If there are specific questions at that deposition that you believe raise privilege issues, Mr. Borman should raise them at that time for the deposition record for the Select Committee's consideration and possible judicial review.

Please be advised that the Select Committee will view Mr. Borman's failure to respond to the Subpoena as willful non-compliance with the Subpoena. His willful non-compliance with the Subpoena would force the Select Committee to consider invoking the contempt of Congress procedures in 2 U.S.C. §§ 192, 194—which could result in a referral from the House to the Department of Justice for criminal charges—as well as the possibility of having a civil action to enforce the Subpoena brought against Mr. Borman in his personal capacity.

Sincerely,


Benito G. Thompson
Chairman

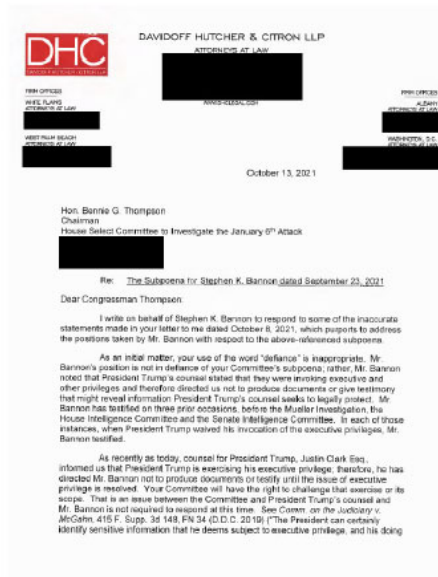
Mr. TONOLLI. And I'll take a brief pause to recognize that Mr. SCHIFF has joined us.

Turning back to the letter that Chairman THOMPSON sent on October 8th, in sum and substance, the response states that Mr. Costello's "letter relies on an apparent instruction from former President Donald Trump that appears limited to requesting that Mr. Bannon not disclose privileged information. Despite this limited instruction, your letter takes the inappropriate position that Mr. Bannon will not comply with any request for information or testimony sought by the Select Committee. Moreover, Mr. Trump's stated intention to assert those executive privileges that may or may not belong to him does not provide a legal basis for Mr. Bannon's refusal to comply with the subpoena."

The letter states the Select Committee's expectation that Mr. Bannon would appear today for the deposition and respond fully to the Select Committee's questions and to state for the record any objections to particular questions for the Select Committee's consideration and possible judicial review.

The letter concludes by advising that the Select Committee will view Mr. Bannon's failure to respond to the subpoena as, "willful noncompliance," that would force the Select Committee to consider invoking the contempt of Congress procedures entitled to United States Code, sections 192 and 194, which could result in a referral from the House to the Department of Justice for criminal charges as well as the possibility of a civil action against Mr. Bannon personally to enforce the subpoena.

I will mark as a final exhibit, exhibit 5, and enter into the record a reply letter that Mr. Costello sent to Chairman THOMPSON, the evening of October 13, 2021.



DAVIDOFF HUTCHER & CITRON LLP

Hon. Bernice G. Thompson
October 13, 2021
Page 2

so gives rise to a legal duty on the part of the aide to invoke the privilege on the President's behalf when, in the course of his testimony, he is asked a question that would require disclosure of that information.)

Until such time as you reach an agreement with President Trump or receive a court ruling as to the extent, scope and application of the executive privilege, in order to preserve the claim of executive and other privileges, Mr. Bannon will not be producing documents or testifying. As noted previously, Mr. Bannon will revisit his position if President Trump's position changes or if a court rules on the matter.

Mr. Bannon's communications with President Trump on the matters at issue in the Subpoena are well within the scope of both the presidential communications and deliberative process executive privileges. See *In re Sealed Case* (E.A.D. 121 F.3d 729 (D.C. Cir. 1997)) (holding that the presidential communications privilege covers communications made or received by presidential advisors in the course of preparing advice for the President even if those communications are not made directly to the President); *Cassidy Shales Gas Corp. v. U.S. Dept. of Energy*, 611 F.2d 654, 668 (D.C. Cir. 1979) (finding that deliberative process privilege applies to "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.")

Very truly yours,

/s/ Robert J. Costello

RJC/crc

Mr. TONOLLI. In sum and substance, the letter reiterates that Mr. Bannon is abiding by President Trump's invocation of executive privilege and direction to Mr. Bannon not to produce documents or testify.

In support of Mr. Bannon's position, the letter cites several judicial opinions on executive privilege, including a 2019 decision of the United States District Court in Washington in the case of *Committee on the Judiciary v. McGahn*.

In particular, the letter cites the following sentence from the court's opinion: "The President can certainly identify sensitive information that he deems subject to executive privilege, and his doing so gives rise to a legal duty on the part of the aide to invoke the privilege on the President's behalf when, in the course of his testimony, he is asked a question that would require disclosure of that information."

However, Mr. Bannon is not here today to assert executive privilege on a question-by-question basis. He chose instead not to appear at all, just as he chose not to produce any documents at all or even a log of responsive documents that he is withholding based on the claim of executive privilege.

With that, I will note for the record that it is 10:06 a.m., and Mr. Bannon still has not appeared or communicated to the Select Committee that he will appear today as required by the subpoena.

Accordingly, the record is now closed as of 10:06 a.m.
[Whereupon, at 10:06 a.m., the deposition was concluded.]

AMENDMENT IN THE NATURE OF A SUBSTITUTE

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO THE COMMITTEE REPORT ON THE RESO-
LUTION RECOMMENDING THAT THE HOUSE OF
REPRESENTATIVES FIND STEPHEN K.
BANNON IN CONTEMPT OF CONGRESS FOR
REFUSAL TO COMPLY WITH A SUBPOENA
DULY ISSUED BY THE SELECT COMMITTEE TO
INVESTIGATE THE JANUARY 6TH ATTACK ON
THE UNITED STATES CAPITOL
OFFERED BY MR. THOMPSON OF MISSISSIPPI

Beginning on page 1, strike "The Select Committee
to Investigate the January 6th Attack on the United
States Capitol, having considered" and all that follows
through the end of the report, and insert the following:

The Select Committee to Investigate the January 6th Attack on the United States Capitol, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Select Committee to Investigate the January 6th Attack on the United States Capitol would recommend to the House of Representatives for citing Stephen K. Bannon for contempt of Congress pursuant to this Report is as follows:

Resolved, That Stephen K. Bannon shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Select Committee to Investigate the January 6th Attack on the United States Capitol, detailing the refusal of Stephen K. Bannon to produce documents or appear for a deposition before the Select Committee to Investigate the January 6th Attack on the United States Capitol as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Bannon be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

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PURPOSE AND SUMMARY

On January 6, 2021, a violent mob breached the security perimeter of the United States Capitol, assaulted and injured scores of police officers, engaged in hand-to-hand violence with those officers over an extended period, and invaded and occupied the Capitol building, all in an effort to halt the lawful counting of electoral votes and reverse the results of the 2020 election. In the words of many of those who participated in the violence, the attack was a direct response to false statements by then-President Donald J. Trump—beginning on election night 2020 and continuing through January 6, 2021—that the 2020 election had been stolen by corrupted voting machines, widespread fraud, and otherwise.

In response, the House adopted House Resolution 503 on June 30, 2021, establishing the Select Committee to Investigate the January 6th Attack on the United States Capitol (hereinafter referred to as the "Select Committee").

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify how the events of January 6th were planned, what actions and statements motivated and contributed to the attack on the Capitol, how the violent riot that day was coordinated with a political and public relations strategy to reverse the election outcome, and why Capitol security was insufficient to address what occurred. The Select Committee will evaluate all facets of these issues, create a public record of what occurred, and recommend to the House, and its relevant committees, corrective laws, policies, procedures, rules, or regulations.

According to many published reports, and his own public statements, Stephen K. Bannon had specific knowledge about the events planned for January 6th before they occurred. He said on his January 5th podcasts, for example:

[I]t's not going to happen like you think it's going to happen. OK, it's going to be quite extraordinarily different. All I can say is, strap in. [...] You made this happen and tomorrow it's game day. So strap in. Let's get ready.¹
All hell is going to break loose tomorrow. [...] So many people said, 'Man, if I was in a revolution, I would be in Washington.' Well, this is your time in history.²

Mr. Bannon appears to have had multiple roles relevant to this investigation, including his role in constructing and participating in the "stop the steal" public relations effort that motivated the attack, his efforts to plan political and other activity in advance of January 6th, and his participation in the events of that day from a "war room" organized at the Willard InterContinental Washington D.C. Hotel (the "Willard Hotel"). Although he was a private citizen not employed by the White House at the time, he reportedly spoke with Mr. Trump directly regarding the plans for January 6th on at least one occasion. In short, Mr. Bannon appears to have played a multi-faceted role in the events of January 6th, and the American people are entitled to hear his first-hand testimony regarding his actions. The Select Committee expects that such testimony will be directly relevant to its report and recommendations for legislative and other action.

On September 23, 2021, Chairman BENNIE G. THOMPSON signed a subpoena for documents and testimony and transmitted it along with a cover letter and schedule to counsel for Mr. Bannon, who accepted service on Mr. Bannon's behalf on September 24, 2021.³ The subpoena required that Mr. Bannon produce responsive documents not later than October 7, 2021, and that Mr. Bannon appear for a deposition on October 14, 2021. Subsequent communications between counsel for Mr. Bannon and Chairman THOMPSON, however, failed to reach any accommodation for Mr. Bannon's appearance for testimony or production of documents. Indeed, counsel for Mr. Bannon on October 7, 2021, flatly stated that Mr. Bannon would not produce any documents or appear at the scheduled deposition, as ordered by the lawful subpoena. Although Mr. Bannon's counsel referenced vague claims of executive privilege purportedly relayed by the former President, no such claims have been presented by the former President to the Select Committee.⁴ And although the Select Committee is confident that such claims could not bar any of its requests, there is no conceivable executive privilege claim that could bar *all* of the Select Committee's requests or justify Mr. Bannon's flat refusal to appear for the required deposition. The Chairman's October 8, 2021, response addressed the legal arguments raised by Mr. Bannon's counsel and made clear that the Select Committee expected—as the law demands—that Mr. Bannon appear before the Select Committee at his deposition and raise any privilege or other concerns regarding specific questions on the record of that proceeding.⁵

The contempt of Congress statute, 2 U.S.C. § 192, makes clear that a witness summoned before Congress must appear or be "~~deemed guilty of a misdemeanor~~" punishable by a fine of up to

¹Steve Bannon, "War Room: Pandemic, TP" 634 – Tuesday Special (with Maggie Vandenberghe, Ben Berquam, and Peter Navarro), (Jan. 5, 2021), available at <https://rumble.com/vch/pu-ep-634-tuesday-special-w-maggie-vandenberghe-ben-berquam-and-peter-navarro.html>.

²Aaron Blake, "Who could have predicted the Capitol riot? Plenty of people – including Trump allies," *Washington Post*, (Jan. 28, 2021), available at <https://www.washingtonpost.com/politics/2021/01/28/who-could-have-predicted-capitol-storm-plenty-people/>.

³See Appendix, Ex. 1, 2 (Subpoena from Chairman BENNIE G. THOMPSON to Stephen K. Bannon and attachments) (Sept. 23, 2021).

⁴See Appendix, Ex. 3 (Letter from Robert J. Costello to Chairman BENNIE G. THOMPSON (Oct. 7, 2021)).

⁵See Appendix, Ex. 4 (Letter from Chairman BENNIE G. THOMPSON to Robert J. Costello (Oct. 8, 2021)).

\$100,000 and imprisonment for up to 1 year.⁶ Further, the Supreme Court in *United States v. Bryan* (1950) emphasized that the subpoena power is a “public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned.”⁷ The Supreme Court recently reinforced this clear obligation by stating that “[w]hen Congress seeks information needed for intelligent legislative action, it unquestionably remains the duty of all citizens to cooperate.”⁸

Mr. Bannon did not produce documents by the subpoena’s October 7, 2021, deadline nor did he appear for a deposition scheduled for October 14, 2021, as ordered by the subpoena and in contravention of the clear instructions by the Select Committee Chairman on October 8, 2021, to appear at the deposition and raise any privilege concerns in response to specific questions on the record. Mr. Bannon’s refusal to comply with the Select Committee’s subpoena *in any way* represents willful default under the law and warrants contempt of Congress and referral to the United States Attorney for the District of Columbia for prosecution as prescribed by law. The denial of the information sought by the subpoena impairs Congress’s central powers under the United States Constitution.

BACKGROUND ON THE SELECT COMMITTEE’S INVESTIGATION

House Resolution 503 sets out the specific purposes of the Select Committee, including:

- to investigate and report upon the facts, circumstances, and causes “relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex”;
- to investigate and report upon the facts, circumstances, and causes “relating to the interference with the peaceful transfer of power”; and
- to investigate and report upon the facts, circumstances, and causes relating to “the influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process.”

The Supreme Court has long recognized Congress’s oversight role. “The power of the Congress to conduct investigations is inherent in the legislative process.”⁹ Indeed, Congress’s ability to enforce its investigatory power “is an essential and appropriate auxiliary to the legislative function.”¹⁰ “Absent such a power, a legislative body could not ‘wisely or effectively’ evaluate those conditions ‘which the legislation is intended to affect or change.’”¹¹

The oversight powers of House and Senate committees are also codified in legislation. For example, the Legislative Reorganization Act of 1946 directed committees to “exercise continuous watchfulness” over the executive branch’s implementation of programs within its jurisdictions,¹² and the Legislative Reorganization Act of 1970 authorized committees to “review and study, on a continuing basis, the application, administration, and execution” of laws.¹³

Pursuant to House rule XI and House Resolution 503, the Select Committee is authorized “to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary.” Further, section 5(c)(4) of House Resolution 503 provides that the Chairman of the Select Com-

⁶The prison term for this offense makes it a Class A misdemeanor. 18 U.S.C. § 3559(a)(6). By that classification, the penalty for contempt of Congress specified in 2 U.S.C. § 192 increased from \$1,000 to \$100,000. 18 U.S.C. § 3571(b)(5).

⁷*United States v. Bryan*, 339 U.S. 323, 331 (1950).

⁸*Trump v. Mazars USA LLP*, 140 S.Ct. 2019, 2036 (2020) (emphasis in original; internal quotation marks removed). See also *Watkins v. United States*, 354 U.S. 178, 187–88 (1957) (stating of citizens that “It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation.”).

⁹*Mazars*, 140 S.Ct. at 2081 (2020) (citing *Watkins*, 354 U.S. at 187) (internal quotation marks removed).

¹⁰*Mazars*, 140 S.Ct. at 2081 (2020) (citing *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927)).

¹¹*Ashland Oil, Inc. v. FTC*, 409 F.Supp. 297, 305 (D.D.C. 1976), *aff’d*, 548 F.2d 977 (D.C.Cir. 1976) (quoting *McGrain*, 273 U.S. at 175).

¹²Pub. L. 79–601, 79th Cong. § 136, (1946).

¹³Pub. L. 91–510, 91st Cong. § 118, (1970).

mittee may “authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study” conducted pursuant to the enumerated purposes and functions of the Select Committee. The Select Committee’s authorizing resolution further states that the Chairman “may order the taking of depositions, including pursuant to subpoena, by a Member or counsel of the Select Committee, in the same manner as a standing committee pursuant to section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress.”

A. The Select Committee seeks information from Mr. Bannon central to its investigative purposes

Mr. Bannon’s testimony and document production are critical to the Select Committee’s investigation. Among other topics, the Select Committee seeks facts that explain why the events of January 6th turned violent. Statements publicly made by Mr. Bannon on January 5, 2021, suggest that he had some foreknowledge about extreme events that would occur the next day. Mr. Bannon noted on January 5th that the country was facing a “constitutional crisis” and “that crisis is about to go up about five orders of magnitude tomorrow.”¹⁴ He also stated that, “All hell is going to break loose tomorrow. [...] It’s not going to happen like you think it’s going to happen. OK, it’s going to be quite extraordinarily different.”¹⁵ Congress, through the Select Committee, is entitled to discover facts concerning the activities leading up to the violence on January 6th. Under House Resolution 503, the Select Committee is directed to investigate those facts, which include “the influencing factors that fomented such an attack.” And after making public statements on January 5th like those quoted above, Mr. Bannon is obliged by law to comply with the reasonable requests of the Select Committee through its subpoena. If any witness so close to the events leading up to the January 6th attack could decline to provide information to the Select Committee, Congress would be severely hamstrung in its ability to exercise its constitutional powers with highly relevant information informing its choices. Information in Mr. Bannon’s possession is essential to putting other witnesses’ testimony and productions into appropriate context and to ensuring the Select Committee can fully and expeditiously complete its work.

Mr. Bannon was the Chief Executive Officer of Mr. Trump’s 2016 presidential campaign and served as then-President Trump’s chief strategist, a White House position, for 8 months in 2017.¹⁶ Mr. Trump fired Mr. Bannon in August 2017,¹⁷ and Mr. Bannon did not thereafter hold a position in the executive branch.

After Mr. Bannon left government service, he remained actively involved in media and politics. In October 2019, Mr. Bannon began a radio show and podcast focused on rallying supporters of Mr. Trump in support of various causes and issues.¹⁸ According to one report, before the election even occurred in 2020, Mr. Bannon made public efforts to explain “his belief that the Democrats are plotting to steal the 2020 election.”¹⁹ One account of conversations involving Mr. Bannon (and Mr. Trump) prior to January 6th describes Mr. Bannon as encouraging Mr. Trump to “focus on January 6th”

and articulating a plan to have millions of Americans consider Mr.

¹⁴Steve Bannon, “War Room: Pandemic,” EP 604 – Tuesday Special (with Maggie

Vandenberghe, Ben Berquam, and Peter Navarro), (Jan. 5, 2021), available at <https://rumble.com/vch0pu-ep-604-tuesday-special-w-maggie-vandenberghe-ben-berquam-and-peter->

navarro.html.

¹⁵*Id.*

¹⁶Brian Bennett, “You Got to Be the Last Guy He Talks To: The Rise and Fall of Trump Adviser Steve Bannon,” *Time*, (Aug. 31, 2020), available at <https://time.com/5882072/rise-and-fall-of-steve-bannon/>.

¹⁷Jeff Mason and Steve Holland, “Trump fired adviser Bannon,” *Bostons*, (Aug. 18, 2017), available at <https://www.reuters.com/article/us-usa-trump-bannon/trump-fired-adviser-bannon-idUSKCN1AY266>.

¹⁸Daniel Lippman, “Steve Bannon launches radio show and podcast on impeachment,” *Politico*, (Oct. 24, 2019), available at <https://www.politico.com/news/2019/10/24/steve-bannon-radio-show-podcast-impeachment-055147>.

¹⁹E.g., KUSI Newsroom, “Steve Bannon explains how the Democrats are plotting to steal the 2020 election,” KUSI, (Oct. 1, 2020), available at <https://www.kusi.com/steve-bannon-explains-how-the-democrats-are-plotting-to-steal-the-2020-election>.

Biden an illegitimate President.²⁰ That same reporting suggests that Mr. Bannon was in frequent contact with the White House in late-December and early-January and spoke directly with the President several times.²¹ Mr. Bannon is reported to have urged then-President Trump to pressure then-Vice President Michael R. Pence to assist in overturning the results of the 2020 election.²²

Mr. Bannon was reportedly encouraging President Trump's supporters to take dramatic action. According to one report, immediately after the November 3rd election, Mr. Bannon began promoting false conspiracy claims that the election had been stolen and referred to the election as "a mass fraud."²³

The day before the January 6th attack on the Capitol, Mr. Bannon predicted that "All hell is going to break loose tomorrow."²⁴ He told the listeners of his radio show:

It's not going to happen like you think it's going to happen. OK, it's going to be quite extraordinarily different. All I can say is strap in. [...] You made this happen and tomorrow it's game day. So strap in. Let's get ready.²⁵

He added:

So many people said, "Man, if I was in a revolution, I would be in Washington." Well, this is your time in history.²⁶

And:

It's all converging, and now we're on the point of attack tomorrow.²⁷

Public reporting also suggests that Mr. Bannon was among several prominent supporters of efforts to undermine the election results who gathered at the Willard Hotel, two blocks from the White House, on the days surrounding the January 6th attack.²⁸ The group that assembled at the Willard Hotel is reported to have included members of the Trump campaign's legal team (including Rudolph Giuliani and John Eastman), several prominent proponents of false election fraud claims that had been promoted by Mr. Trump (e.g., Russell Ramsland, Jr. and Boris Epshteyn), as well as Roger Stone, who left the hotel with Oath Keeper bodyguards, and campaign spokesman Jason Miller.²⁹ It has been reported that the participants in the meetings at the Willard Hotel discussed plans to stop or delay the January 6th counting of the election results and persuade Members of Congress to block the electoral count.³⁰

Mr. Bannon's statements the day before the January 6th attack, and his association with both the Trump inner circle and outside groups involved in the "Stop the Steal"³¹ events, make his testimony about the Willard Hotel meetings essential to fully understanding and establishing responsibility for the events of January 6th. In addition to the indications noted above regarding Mr. Bannon's role in various activities leading up to January 6th, he

²⁰Bob Woodward and Robert Costa, *Ford*, (New York: Simon & Schuster, 2021), p. 207.

²¹*Id.*, pp. 207, 233–234.

²²*Id.*, p. 207.

²³Bob Kuzma, et al., "Stop the Steal's massive disinformation campaign connected to Roger Stone," CNN (Nov. 14, 2020), available at <https://www.cnn.com/2020/11/13/business/stop-the-steal-disinformation-campaign-ny/index.html>.

²⁴Aaron Blake, "Who could have predicted the Capitol riot? Plenty of people – including Trump allies," *Washington Post*, (Jan. 28, 2021), available at <https://www.washingtonpost.com/politics/2021/01/28/who-could-have-predicted-capitol-steps-plenty-people/>.

²⁵Steve Bannon, "War Room: Pandemic," EP 834 – Tuesday Special (with Maggie Vanderberghe, Ben Berqu岸, and Peter Navarro), (Jan. 5, 2021), available at <https://rumble.com/vc1lps-cp-834-tuesday-special-w-maggie-vanderberghe-ben-berqu岸-and-peter-navarro.html>.

²⁶Aaron Blake, "Who could have predicted the Capitol riot? Plenty of people – including Trump allies," *Washington Post*, (Jan. 28, 2021), available at <https://www.washingtonpost.com/politics/2021/01/28/who-could-have-predicted-capitol-steps-plenty-people/>.

²⁷*Id.*

²⁸Woodward and Costa, pp. 233–234; Andre J. Ellington, "Steve Bannon Confirms His Involvement in January 6 Insurrection on 'War Room' Podcast," *Newsweek*, (Sept. 22, 2021), available at <https://www.newsweek.com/steve-bannon-confirms-his-involvement-january-6-insurrection-war-room-podcast-1631667>.

²⁹Woodward and Costa, pp. 233–234; Michael Wolff, "Donald Trump's January 6: The view from inside the Oval Office," *New York*, (June 28, 2021), available at <https://www.nytimes.com/2021/06/28/us/politics/donald-trump-january-6.html>; Seth Abramson (@SethAbramson), Twitter (June 12, 2021, 10:51 a.m.), <https://twitter.com/SethAbramson/status/1406728643722147200/photo/1>.

³⁰Woodward and Costa, p. 233.

³¹There were a number of events organized to take place on January 5th and January 6th at which supporters of President Trump gathered, and made and heard speeches, in support of the position that Congress should not affirm that Joe Biden had won the 270 or more electoral college votes necessary to be elected President.

also reportedly spoke directly to Mr. Trump on one or more occasions regarding what could or should happen on January 6th.³²

B. Mr. Bannon's refusal to comply with the Select Committee's subpoena for testimony and documents

On September 23, 2021, Chairman THOMPSON signed and transmitted a subpoena, cover letter, and schedule to Mr. Bannon ordering the production of both documents and testimony relevant to the Select Committee's investigation into "important activities that led to and informed the events at the Capitol on January 6, 2021."³³ Chairman THOMPSON's letter identified public reports describing Mr. Bannon's activities and past statements, documenting some of the public information that gave the Select Committee reason to believe Mr. Bannon possesses information about matters within the scope of the Select Committee's inquiry.

The specific documents requested are found in the schedule in the Appendix, Exhibit 1, (pp. 4–5). The schedule included with the subpoena addressed topics including but not limited to Mr. Bannon's role in planning and promoting the January 6, 2021, rally and march in support of Mr. Trump; Mr. Trump's participation in the rally and march; Mr. Bannon's podcast and its use for promoting the rally and march; and Mr. Bannon's strategic communications with a host of individuals known to be involved with the former President's 2020 election campaign and subsequent efforts to undermine or cast doubt on the results of that election.

The subpoena required Mr. Bannon to produce the requested documents to the Select Committee on October 7, 2021, at 10 a.m. and required Mr. Bannon's presence for the taking of testimony on October 14, 2021, at 10 a.m.³⁴ Mr. Bannon had designated Robert J. Costello as his attorney for the purposes of the Select Committee's inquiry, and Mr. Costello accepted service of the subpoena on behalf of Mr. Bannon on September 24, 2021.³⁵

On October 7, 2021, at 10 a.m., at the designated location identified in the subpoena, Mr. Bannon failed to appear and produce documents. Instead, over 7 hours later, Mr. Costello sent a letter to Chairman THOMPSON via email at 5:04 p.m. reinforcing Mr. Bannon's refusal to comply.

Mr. Costello's letter cited an October 6, 2021, letter from former President Trump's counsel Justin Clark to Mr. Costello that purportedly instructed Mr. Bannon to "invoke any immunities and privileges he may have from compelled testimony," "not produce any documents concerning privileged material," and "not provide any testimony concerning privileged material[.]"³⁶ Mr. Costello's letter then asserted that Mr. Bannon was "legally unable to comply," with the subpoena for "documents or testimony," claiming to rely on the instructions of Mr. Trump to not disclose privileged information.³⁷ The two-page letter contained only conclusory statements, no legal analysis, and approximately half of it purported to quote from the letter of October 6, 2021, from the counsel to Mr. Trump.

On October 8, 2021, Chairman THOMPSON responded to Mr. Costello's October 7, 2021, letter.³⁸ He said that Mr. Trump had not communicated an invocation of privilege either formally or informally to the Select Committee. He further stated that, regardless, the information the Select Committee seeks from Mr. Bannon concerns his actions as a private citizen and involves a range of subjects not even conceivably reached by any executive privilege assertion. Chairman THOMPSON also noted that—even assuming Mr. Bannon were correct that a privilege applied to his documents and testimony and Mr. Trump had formally invoked a privilege through

³² See, e.g., Woodward and Costa, p. 207.

³³ See Appendix, Exs. 1, 2.

³⁴ See Appendix, Ex. 1.

³⁵ See Appendix, Ex. 2 (Emails between Select Committee staff and Robert J. Costello (Sept. 23–24, 2021)).

³⁶ See Appendix, Ex. 3 (Letter from Robert J. Costello to Select Committee staff (Oct. 7, 2021)).

³⁷ *Id.*

³⁸ See Appendix, Ex. 4 (Letter from Chairman BRENN G. THOMPSON to Robert J. Costello (Oct. 8, 2021)).

the long-standing practice of consultation with the current President (which is not the case)—Mr. Bannon does not enjoy anything like the type of absolute immunity his attorney suggested would insulate Mr. Bannon from an obligation to comply with the Select Committee's subpoena. Again, there is no conceivable legal claim to support such an assertion.

The Chairman underscored that Mr. Bannon remained obligated to produce documents and testimony about all non-privileged material that was responsive to the subpoena, was expected to produce a privilege log identifying any documents being withheld based on any specific privilege claims, and that the Select Committee expected Mr. Bannon to appear at the deposition on October 14th and state on the record any privilege concerns raised by specific questions. As made clear by the deposition rules provided to Mr. Bannon by the Select Committee, under House deposition regulation 3, Mr. Bannon may be accompanied at the deposition by a personal, nongovernmental counsel to advise him of his rights.³⁹

The Chairman concluded by saying that Mr. Bannon was therefore not in compliance with the Chairman's duly issued subpoena for documents, and that the Select Committee would view refusal to produce documents and refusal to appear at the October 14th deposition as willful non-compliance with the subpoena. The Chairman warned that this willful non-compliance would put Mr. Bannon in jeopardy of a vote to refer him to the House to consider a criminal contempt referral to a U.S. Attorney pursuant to 2 U.S.C. §§ 192 and 194.⁴⁰

On October 13, 2021, at approximately 12:35 p.m., Select Committee staff emailed Mr. Costello to discuss logistics for the deposition at which Mr. Bannon was compelled to appear on October 14, 2021, at 10 a.m. Approximately an hour later, Select Committee staff and Mr. Costello spoke on the telephone, during which Mr. Costello informed the Select Committee that Mr. Bannon would not appear the next day, and that a letter to that effect was forthcoming. Mr. Costello indicated that he was in contact with Mr. Trump's attorney, and he had informed Mr. Trump's attorney of the Select Committee's explanation of the deficiencies in Mr. Bannon's and Mr. Trump's justifications for Mr. Bannon's defiance of the subpoena.

On that call, Mr. Costello represented to the Select Committee that he had asked Mr. Trump's counsel to identify, with specificity, communications for which executive privilege would apply. Later that day, Mr. Costello transmitted a response to Chairman THOMPSON's October 8, 2021, letter. In that letter, Mr. Costello reiterated his position that Mr. Bannon's refusal to comply with the Select Committee subpoena was based on the former President's "executive and other privileges."⁴¹ Mr. Costello claimed that President Trump's counsel had "exercis[ed] his executive privilege" and "directed Mr. Bannon not to produce documents or testify until the issue of executive privilege is resolved."⁴² He further stated that Mr. Bannon would refuse to produce any documents or appear for testimony until after a court had ruled on, or former President Trump and the Select Committee reached an agreement on, the matter of executive privilege that the former President had never actually communicated to the Select Committee. In defiance of the clear instructions by the Select Committee to appear at the deposition and state any privilege concerns as they applied to specific questions, Mr. Bannon refused to appear to make any objections in person. Further, he refused to engage at all with the specifics of the document demands, including failing to provide a privilege log identifying any privilege claims regarding specific documents.

³⁹ U.S. House of Representatives, "117th Congress Regulations for Use of Deposition Authority," 117 Cong. Rec. (Jan. 4, 2021), p. 1441.

⁴⁰ See Appendix, Ex. 4 (Letter from Chairman BRENNAN G. THOMPSON to Robert J. Costello (Oct. 8, 2021)).

⁴¹ See Appendix, Ex. 5 (Letter from Robert J. Costello to Chairman BRENNAN G. THOMPSON (Oct. 13, 2021)).

⁴² *Id.*

On October 14, 2021, at 10 a.m., Mr. Bannon failed to appear at the designated location to provide testimony relevant to the Select Committee's inquiry in response to questions posed, as was required by the subpoena.⁴³

At 2:05 p.m. on October 15, 2021, Chairman THOMPSON sent a letter to Mr. Costello noting that Mr. Bannon had not even attempted to provide the Select Committee any explanation for refusing to comply with the Select Committee's demand for documents and testimony on a range of subjects that do not involve communications with the former President. The Chairman also reiterated that Mr. Bannon does not enjoy absolute immunity from testifying before the Select Committee. The Chairman reminded Mr. Costello that the Select Committee views Mr. Bannon's conduct as willful non-compliance with the subpoena. He notified Mr. Costello that, accordingly, the Select Committee would meet on October 19, 2021, to consider a criminal contempt referral for Mr. Bannon, and invited Mr. Costello to submit any written materials he believed the Select Committee should consider in its deliberations on this referral.

On October 18, 2021, Mr. Costello wrote Chairman Thompson requesting a "one-week adjournment of our response" to the Chairman's October 15th letter, citing the need to "assess" litigation Mr. Trump filed on October 18, 2021, concerning the Select Committee's request for documents from the National Archives.⁴⁴ The Chairman replied on October 19, 2021, that Mr. Trump's lawsuit was immaterial to the Select Committee's subpoena to Mr. Bannon, and accordingly, no grounds existed for any further delay in Mr. Bannon's compliance with the subpoena.⁴⁵

C. Mr. Bannon's purported basis for non-compliance is wholly without merit

Mr. Bannon has relied on no legal authority to support his refusal to comply in any fashion with the subpoena. Mr. Bannon's refusal to comply with the subpoena is ostensibly based on his decision to "honor [former President Trump's] invocation of executive privilege" and instruction that, "to the fullest extent permitted by law," Mr. Bannon "invoke any immunities and privileges he may have from compelled testimony," "not produce any documents concerning privileged material," and "not provide any testimony concerning privileged material."⁴⁶ Far from being "permitted by law," Mr. Bannon's conduct in response to the Select Committee's subpoena constitutes a violation of the contempt of Congress statutory provisions.

1. Executive privilege has not been invoked

Mr. Trump has had no communication with the Select Committee. In an October 7th letter to the Select Committee, Mr. Bannon's attorney referred to purported correspondence from Mr. Trump's attorney, Justin Clark, in which Mr. Clark asserted that the Select Committee subpoena seeks information that is "potentially protected from disclosure by executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges."⁴⁷ According to Mr. Bannon's attorney, Mr. Clark also stated that, "President Trump is prepared to defend these fundamental privileges in court."⁴⁸

⁴³ See Appendix.

⁴⁴ Letter from Robert J. Costello to Chairman THOMPSON, (Oct. 18, 2021).

⁴⁵ Letter from Chairman THOMPSON to Robert J. Costello, (Oct. 19, 2021).

⁴⁶ See Appendix, Ex. 3 (Letter from Robert J. Costello to Select Committee staff (Oct. 7, 2021)).

⁴⁷ *Id.*

⁴⁸ *Id.*

In *United States v. Reynolds*, 345 U.S. 1, 7–8 (1953), the Supreme Court held that executive privilege:

[B]elongs to the Government and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer.⁴⁹

Here, the Select Committee has not been provided with any formal invocation of executive privilege by the President, the former President,⁵⁰ or any other employee of the executive branch.

In fact, in an October 18, 2021, letter to Mr. Bannon's attorney, the White House Counsel's Office specifically stated that "at this point we are not aware of any basis for [Mr. Bannon's] refusal to appear for a deposition."

The letter also informed Mr. Bannon's counsel that:

[P]resident Biden determined that an assertion of executive privilege is not justified with respect to a set of documents shedding light on events within the White House on and about January 6, 2021, and with respect to documents and testimony concerning the former President's efforts to use the Department of Justice to advance a false narrative that the 2020 election was tainted by widespread fraud. President Biden's determination that an assertion of privilege is not justified with respect to these subjects applies to [Mr. Bannon's] deposition testimony and to any documents [Mr. Bannon] may possess concerning either subject.⁵¹

With respect to the former President, the Select Committee has not received a formal invocation of executive privilege. Mr. Costello's October 13th letter merely states that the attorney for former President Trump had informed him that "President Trump is exercising his executive privilege." This third-hand, non-specific assertion of privilege, without any description of the documents or testimony over which privilege is claimed, is insufficient to activate a claim of executive privilege.

2. *Even assuming an invocation of executive privilege (which is not justified here), assertion of privilege could not bar the Select Committee from lawfully obtaining the documents and testimony it seeks from Mr. Bannon*

The Select Committee seeks information from Mr. Bannon on a wide range of subjects that it is inconceivable executive privilege would reach. Mr. Bannon was a private citizen during the relevant time period and the testimony and documents the Select Committee is demanding do not concern discussion of official government matters with the President and his immediate advisors. The law is clear that executive privilege does not extend to discussions between the President and private citizens relating to non-governmental business or among private citizens. In *United States v. Nixon*, 418 U.S. 683, 708 (1974), the Supreme Court recognized a qualified, presumptive privilege for presidential communications. The scope of the so-called "presidential communications privilege" was further defined by the Court to apply only to "communications in performance of [a President's] responsibilities of his office and made in the process of shaping policies and making decisions."⁵²

In *In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997), the DC Circuit extended the presidential communications privilege to "communications authored or solicited and received by those members of an immediate White House adviser's staff who have

⁴⁹See also *United States v. Burr*, 25 F. Cas. 187, 192 (CCD Va. 1807) (ruling that President Jefferson had to personally identify the passages he deemed confidential and could not leave this determination to the U.S. Attorney). In *Reynolds*, the Court addressed the "state secrets privilege," which can be viewed as a subset of executive privilege.

⁵⁰The Supreme Court has held that a former President may assert executive privilege on his own, but his claim should be given less weight than that of an incumbent President. *Nixon v. Administrator of General Services*, 433 U.S. 425, 461 (1977) (the "expectation of the confidentiality of executive communications thus has always been limited and subject to erosion over time after an administration leaves office"). The Supreme Court in *Nixon v. GSA* made note of the fact that neither President Ford nor President Carter supported former President Nixon's assertion of privilege, which, the Court said, "detracts from the weight of his contention [that the disclosure of the information at issue] impermissibly intrudes into the executive function and the needs of the Executive Branch." *Id.*, p. 449.

⁵¹Letter to Robert J. Costello from Jonathan C. Su, Deputy Counsel to the President, (Oct. 18, 2021).

⁵²*Nixon v. Administrator of General Services*, 433 U.S. at 449 (internal citations and quotations omitted).

broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate.” The court stressed that the privilege only applies to communications intended to advise the President “on official government matters.”⁵³ In *Judicial Watch, Inc. v. Department of Justice*, 365 F.3d 1108, 1123 (D.C. Cir. 2004), the court reaffirmed that the presidential communications privilege applies only to documents “solicited and received by the President or his immediate advisers in the Office of the President.” Relying on *In re Sealed Case* and the principle that “the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the confidentiality of the President’s decision-making process is adequately protected,”⁵⁴ the court refused to extend the privilege even to executive branch employees whose sole function was to provide advice to the President in the performance of a “quintessential and nondelegable Presidential power.”⁵⁵

Here, neither Mr. Bannon nor former President Trump has asserted that Mr. Bannon’s testimony would reveal communications involving the President or members of his immediate White House staff regarding the performance of the President’s responsibilities of his office. At no point during the time period under investigation by the Select Committee was Mr. Bannon a government employee, much less a key White House adviser in the Office of the President. Moreover, the matters under review by the Select Committee concern efforts to overturn legitimate election results and an attack on our democratic institutions. Communications regarding these subjects (or any other matter related to the presidential campaign), by definition, would not constitute advice on “official government matters” that could be shielded by executive privilege. In any event, any confidentiality interest in such communications would be far outweighed by the oversight needs for this information that are at stake in the Select Committee’s investigation.

In sum: In this instance, there is no reasonable argument that Mr. Bannon’s communications with the President regarding January 6th are the type of matters on which privilege can be asserted. Also, the Select Committee is confident that no executive privilege assertion would bar Mr. Bannon’s testimony regarding his communications directly with the President regarding January 6th—because the privilege is qualified and could be overcome by an appropriate showing of need. Again, there is no conceivable assertion that privilege could apply to other information sought that does not constitute communications with Mr. Trump during his presidency. Beyond communications between Mr. Bannon and Mr. Trump, the Select Committee seeks documents and testimony from Mr. Bannon regarding his own actions and interactions with other private citizens relating to the events of January 6th. For example, the subpoena to Mr. Bannon includes requests for documents related to many other matters, including:⁵⁶

- His presence, purpose, statements, and activities at a meeting with Members of Congress at the Willard Hotel on January 5, 2021, or the presence, purpose, statements, or activities of others in attendance related to that meeting.
- Anyone with whom he communicated by any means with respect to any aspect of the planning, objectives, conduct, or participation in the January 6, 2021, rally, including but not limited to Boris Epshteyn.
- Anyone with whom he communicated with respect to efforts, plans, or proposals to contest the 2020 presidential election results or delay, influence, or impeded the electoral count, including but not limited to communications with Boris Epshteyn, Kashyap Patel, and Ezra Cohen-Watnick.

⁵³ *Id.* (italics added.)

⁵⁴ *Id.*, p. 1116.

⁵⁵ *Id.*, p. 1111. See also *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 100 (D.D.C. 2008) (privilege claimants acknowledged that executive privilege applies only to “a very small cadre of senior advisers”).

⁵⁶ See Appendix, Ex. 1.

- All public relations, advertising, or other communications efforts to persuade Americans that the election was stolen.

- The January 6, 2021, rally on The Mall and Capitol grounds in Washington, DC, in support of President Donald J. Trump and opposition to the counting of the results of the 2020 presidential election, including its permitting, planning, objectives, financing, and conduct, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.

- The financing or fundraising to assist any individual's or organization's travel to or accommodation in Washington, DC, to attend or participate in the January 6, 2021, rally.

- The "War Room" podcast, insofar as at any time he communicated through it statements referring or relating to the January 6, 2021, rally, including all statements concerning its planning, objectives, purpose, organization, message, or sponsorship.

- The organization or group named "March for Trump" and its activities relating to the January 6, 2021, rally, including any communications Mr. Bannon had with any officer or member of "March for Trump" relating in any way to the planning, objectives, organization, message, sponsorship, and participation in the January 6, 2021, rally.

No colorable claim of executive privilege could possibly be made with respect to documents or testimony related to these and other matters sought by the subpoena, or any other topics that were not connected to official decisionmaking by the President.

3. Mr. Bannon is not entitled to absolute immunity

Mr. Bannon has refused to provide any responsive documents or appear for a deposition based on his asserted reliance on Mr. Trump's purported invocation of executive privilege. However, even if Mr. Trump had invoked executive privilege, and even if certain testimony or documents would fall within that privilege, Mr. Bannon would not be immune from compelled testimony before the Select Committee.

The law is clear that even senior White House aides who advise the President on official government business are not immune from compelled congressional process.⁵⁷ To the extent there has been a formal invocation of executive privilege by the Office of the President, and in the unlikely event that testimony by Mr. Bannon relates to information covered by that privilege, Mr. Bannon was nonetheless required to appear before the Select Committee to provide testimony and invoke executive privilege where appropriate. If there are responsive documents that Mr. Bannon claims include privileged information, he was required to provide the Select Committee with a privilege log that "identifies and describes the material in a manner sufficient to enable resolution of any privilege claims."⁵⁸ Mr. Bannon did neither. He should be held in contempt.

D. Precedent supports the Select Committee's position to proceed with holding Mr. Bannon in contempt

An individual who fails or refuses to comply with a House subpoena may be cited for contempt of Congress.⁵⁹ Pursuant to 2 U.S.C. § 192, the willful refusal to comply with a congressional subpoena is punishable by a fine of up to \$100,000 and imprisonment

⁵⁷See also *Committee on the Judiciary v. Miers*, 415 F.Supp.2d 148, 214 (D.D.C. 2019) (and subsequent history) ("To make the point as plain as possible, it is clear to this Court for the reasons explained above that, with respect to senior-level presidential aides, absolute immunity from compelled congressional process simply does not exist."); *Committee on the Judiciary v. Miers*, 558 F. Supp.2d 53, 101 (D.D.C. 2008) (holding that White House counsel may not refuse to testify based on direction from the President that testimony will implicate executive privilege).

⁵⁸See *Comm. on Oversight and Gov't Reform v. Holder*, 2014 U.S. Dist. LEXIS 200278 at *7 (D.D.C. Aug. 20, 2014) (quoting *Miers*, 558 F. Supp. 2d at 107).

⁵⁹*Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 505, 515 (1975).

for up to 1 year.⁶⁰ A committee may vote to seek a contempt citation against a recalcitrant witness. This action is then reported to the House. If a resolution to that end is adopted by the House, the matter is referred to a U.S. Attorney, who has a duty to refer the matter to a grand jury for an indictment.⁶¹

In his October 8th letter to Mr. Bannon's counsel, the Chairman of the Select Committee advised Mr. Bannon that his claims of executive privilege were not well-founded and did not absolve him of his obligation to produce documents and testify in deposition. The Chairman made clear that the Select Committee expected Mr. Bannon to appear for his scheduled deposition on October 14th and produce the requested documents at that time. The Chairman warned Mr. Bannon that his continued non-compliance would put him in jeopardy of a vote to refer him to the House to consider a criminal contempt referral. Mr. Bannon's failure to appear for deposition or produce responsive documents in the face of this clear advisement and warning by the Chairman constitutes a willful failure to comply with the subpoena.

SELECT COMMITTEE CONSIDERATION

[. . .]

SELECT COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Select Committee to list the recorded votes during consideration of this Report:
[. . .]

SELECT COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII, the Select Committee advises that the oversight findings and recommendations of the Select Committee are incorporated in the descriptive portions of this Report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Select Committee finds the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, to be inapplicable to this Report. Accordingly, the Select Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the Report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the objective of this Report is to enforce the Select Committee's authority to investigate the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate problems and to recommend corrective laws, policies, procedures, rules, or regulations; and to enforce the Select Committee's subpoena authority found in section 5(c)(4) of House Resolution 503.

⁶⁰See *supra* note 6. The prison term for this offense makes it a Class A misdemeanor. 18 U.S.C. § 3559(a)(6). By that classification, the penalty for contempt of Congress specified in 2 U.S.C. § 192 increased from \$1,000 to \$100,000. 18 U.S.C. § 3571(b)(6).

⁶¹See 2 U.S.C. § 192.

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I will mark as exhibit 1 and enter into the record the Select Committee's subpoena to Mr. Bannon, included with which are the materials that accompanied the subpoena, namely, a letter from the chairman, a document scheduled with accompanying production instructions, and a copy of the deposition rules.

SUBPOENA
BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA

Stephen K. Rasmussen
 via Robert Corallo, Esq., Davidson, Butlercher and Cline, LLP

To: You are hereby commanded to be and appear before the
 Select Committee to Investigate the January 6th Attack on the United States Capitol

of the House of Representatives of the United States at the place, date, and time specified below:

☒ to produce the things identified on the attached schedule (including matters of inquiry committed to said committee or subcommittee, and you are not to depart without leave of said committee or subcommittee).

Place of production: [REDACTED]
 Date: October 7, 2021 Time: 10:00 a.m.

☒ to testify at a deposition (including matters of inquiry committed to said committee or subcommittee, and you are not to depart without leave of said committee or subcommittee).

Place of testimony: [REDACTED]
 Date: October 14, 2021 Time: 10:00 a.m.

☐ to testify at a hearing (including matters of inquiry committed to said committee or subcommittee, and you are not to depart without leave of said committee or subcommittee).

Place of testimony: _____
 Date: _____ Time: _____

To, any authorized officer or the United States Marshal's Service to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
 the city of Washington, D.C. this 23rd day of September, 2021.

Attest: [Signature]
 Clerk


[Signature]
 Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Stephen S. Bannon c/o Robert Connelley, Esq., Davidson, Harkness and Citron, LLP	
Address [REDACTED]	
[REDACTED]	
Deliver to: Sub C Committee to Investigate the January 6th Attack on the United States Capitol	
[REDACTED]	
U.S. House of Representatives 1756 Congress	

Served by (print name)	[REDACTED]
Title	[REDACTED]
Manner of service	[REDACTED]
Date	7/25/21
Signature of Server	[REDACTED]
Address	[REDACTED]

HOUSE OF REPRESENTATIVES
OFFICE OF THE CLERK
1000 CAPITOL BUILDING
WASHINGTON, DC 20540
202-225-4800
www.house.gov



The Honorable Members of Congress
Select Committee to Investigate the January 6th Attack on the United States Capitol

U.S. House of Representatives
Washington, DC 20540
www.house.gov
202-225-4800

September 23, 2021

Mr. Stephen K. Bannon
c/o Mr. Robert J. Cingolillo
[REDACTED]


Dear Mr. Bannon:

Pursuant to the authority set forth in House Resolution 563 and the rules of the House of Representatives, the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Select Committee") hereby transmits a subpoena compelling you to produce the documents set forth in the accompanying schedule by October 7, 2021, and to appear for a deposition on October 14, 2021.

The Select Committee is investigating the facts, circumstances, and causes of the January 6th attack and issues relating to the peaceful transfer of power, in order to identify and evaluate lessons learned and to recommend to the House and to relevant committees corrective laws, policies, procedures, rules, or regulations. This inquiry includes examination of how various individuals and entities coordinated their activities leading up to the events of January 6, 2021.

The Select Committee has reason to believe that you have information relevant to understanding important activities that led to and informed the events at the Capitol on January 6, 2021. For example, you have been identified as present at the Willard Hotel on January 5, 2021, during an effort to persuade Members of Congress to block the certification of the election the next day, and in relation to other activities on January 6.¹ You are also described as communicating with then-President Trump on December 30, 2020, and potentially other occasions, urging him to plan for and focus his efforts on January 6.² Moreover, you are quoted as stating, on January 5, 2021, that "[t]he [Capitol] is going to break [once] tomorrow."³ Accordingly, the Select Committee seeks both documents and your deposition testimony regarding these and multiple other matters that are within the scope of the Select Committee's inquiry.

A copy of the rules governing Select Committee depositions, and a copy of document production definitions and instructions are attached. Please contact staff for the Select Committee at 202-225-7800 to arrange for the production of documents.

Sincerely,

Bonnie G. Thompson
Chairman

¹ E.g., Ben Whisenand & Robert Cingolillo, *PEEL*, at 253 (2021).
² *Id.* at 347.
³ Ben Whisenand, *One Decision, A Dozen Conflicts, How Trump's Chief of Staff Aided the Plan to Attack the Capitol*, CNN (Oct. 16, 2021), <https://www.cnn.com/2021/10/16/politics/trump-sonne-one-conflict-attack/index.html>.

Mr. Stephen K. Bannon
Page 2

SCHEDULE

In accordance with the attached Definitions and Instructions, you, Stephen K. Bannon, are hereby required to produce all documents and communications in your possession, custody, and control—including any such documents or communications stored or located on personal devices (e.g., personal computers, cellular phones, tablets, etc.), in personal or campaign accounts, and/or on personal or campaign applications (e.g., email accounts, contact lists, calendar entries, etc.)—referring or relating to referring or relating to the following items. If no date range is specified below, the applicable dates are for the time period April 1, 2020–present:

1. The January 6, 2021, rally on the mall and Capitol grounds in Washington, D.C., in support of President Donald J. Trump and opposition to certification of the results of the 2020 presidential election, including any permitting, planning, objectives, financing, and outreach, as well as any communications to or from any person or group involved in organizing or planning for the January 6, 2021, rally.
2. Then-President Trump's participation in the January 6, 2021, rally, including any communications with President Trump or any paid or unpaid attorney, advisor, aide, or assistant to President Trump relating to the nature, content, or content of President Trump's intended or actual remarks to those attending the January 6, 2021, rally.
3. Communications referring or relating to the nature, planning, outreach, message, content, or participation in the January 6, 2021, rally between or among any person who, during the administration of President Donald J. Trump, worked in the White House complex, including any employee or detainee.
4. Documents or other materials referring or relating to the financing or fundraising to assist any individual or organization's travel to or accommodation in Washington, D.C., to attend or participate in the January 6, 2021, rally.
5. "The 'War Room' podcast," insofar as at any time you communicated through it statements referring or relating to efforts to contest the election results, including planning for the January 6, 2021, rally, including all statements concerning its planning, objectives, purpose, organization, message, or sponsorship.
6. The organization or group named "March for Trump" and its activities relating to the January 6, 2021, rally, including any communications you had with any officer or member of "March for Trump" relating in any way to the planning, objectives, organization, message, sponsorship, and participation in the January 6, 2021, rally.
7. Your presence, purpose, statements, and activities at a meeting at the Willard Hotel on January 5, 2021, or the presence, purpose, statements, or activities of others in attendance, related to that meeting.
8. Your communications with President Donald J. Trump concerning events on January 6, 2021, including but not limited to communications on December 30, 2020.
9. Your communications with President Donald J. Trump between November 3 and January 20, 2021, concerning efforts to contest the election results or delay or impede the electoral count.
10. Anyone with whom you communicated by any means with respect to any aspect of the planning, objectives, conduct, or participation in the January 6, 2021, rally, including but not limited to Boris Epshteyn, Kashyap Patel, and Ilya Cohen-Waisack.

Mr. Stephen K. Bannon
Page 5

11. Anyone with whom you communicated by any means with respect to efforts, plans, or proposals to contest the 2020 Presidential election results or delay, influence, or impede the electoral count, including but not limited to communications with Boris Epeyev, Kadyog Patel, and Ezra Cohen-Watnick.
12. All public relations, advertising, or other communications efforts to persuade Americans that the election was stolen or to amend the tally on January 6.
13. The role of the Vice President as the Presiding Officer in the certification of the votes of the electoral college.
14. Any communication with any employees of President Trump's 2020 presidential campaign, the Republican National Committee, or any Trump Administration personnel including appointees, employees, and interns, about any of the foregoing topics.
15. Any communication regarding any of the foregoing topics with Proud Boys, Oak Keepers, Three Percenters, and Alex Jones.
16. Any communication with Representative Scott Perry and/or other Members of Congress about any of the foregoing topics.
17. Any communication with Rudygi GicLark, John Eastman, Michael Flynn, Jenna Ellis, or Sydney Powell about any of the foregoing topics.

DOCUMENT PRODUCTION DEFINITIONS AND INSTRUCTIONS

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, concealed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attacks on the United States Capitol ("Committee").
3. In the event that any entity, organization, or individual deposed in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in a protected electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes, but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).
5. Electronic document productions should be prepared according to the following standards:
 - a. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:
 BEGINDOC, ENDDOC, TEXT, BEGINATTACH, ENDATTACH,
 PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME,
 SENTDATE, SENTTIME, BEGINDATE, RECIPTIME, ENDDATE,
 ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE,
 FILENAME, FILEEXT, FILESIZE, DATETIMECREATED, TIMECREATED,
 DATELASTMOD, TIMELASTMOD, INTMSID, INTMSREADER,
 NATVTITLE, INTITLE, DATE, ENCRYPTION, BEGINATTACH

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent rows that use CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, folders, or identifying markers with which they were associated when the request was received.
8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
10. The pendency of or potential for litigation shall not be a basis to withhold any information.
11. In accordance with 5 U.S.C. § 552(b), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
12. Pursuant to 5 U.S.C. § 552a(k)(9), the Privacy Act shall not be a basis for withholding information.
13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.
14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipient), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify where the responsive document can now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).
16. If a date or other descriptive detail set forth in this request referring to a document

is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the status date shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how stored/displayed (e.g., on a social media platform) and whether original or copy, including, but not limited to, the following: memoranda, reports, captions, reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, signatures, receipts, approvals, pamphlets, magazines, newspapers, press releases, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, computer or mobile device screenshots, screen captures, isotopies, invoices, transcripts, diaries, analyses, minutes, memoranda, minutes, bills, accounts, estimates, proposals, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, iterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfilm, microfiche, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, internet, electronic message (including email (electronic mail) device, text message, instant message, chat or IM), or other message, message application, through use of media or other platform, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term "including" shall be construed broadly to mean "including, but not limited to."
5. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, operations, or other legal business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.
7. The term "related to" or "referring to" or "relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, illustrates, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term "employees" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detainee, assignee, fellow, independent contractor, intern, joint adventurer, leased employee, officer, part time employee, partowner employee, professional employee, special government employee, subcontractor, or any other type of service provider.
9. The term "individual" means all natural persons and all persons or entities acting on their behalf.

[illegible][illegible][illegible]

Mr. TONOLLI, I will mark as exhibit 2 and enter into the record an email exchange between *** and Robert Costello, Mr. Bannon's attorney.

From: Costello, Robert J [mailto:robert.j.costello@house.gov]
 Sent: Friday, September 24, 2021 11:04 PM
 To: [redacted]
 Subject: Re: subpoena to Mr. Bannon

In response to your email of yesterday, I will advise you that I have been authorized by Steve Bannon to accept service of the subpoenas from the House Select Committee on his behalf.
 Very truly yours,
 Robert J. Costello

Sent from my iPhone

On Sep 23, 2021, at 6:58 PM, [redacted] wrote:

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

Dear Mr. Costello,

I am following up on our conversation today in which you confirmed that you represent Stephen Bannon. I understand that you are checking with Mr. Bannon regarding whether he will authorize you to accept service of a subpoena on his behalf. The Select Committee to Investigate the January 6th Attack on the United States Capitol is today issuing the attached subpoenas to Mr. Bannon for his testimony and the production of documents to the Committee. In the event that you will accept service, I am attaching to this email the subpoenas, along with a letter from Chairman Elise Thompson, a document schedule with accompanying production instructions, and a copy of the deposition rules.

Please confirm whether you will accept service of this subpoena on Mr. Bannon's behalf.

Thank you,
 [redacted]

[redacted]

j

[REDACTED]

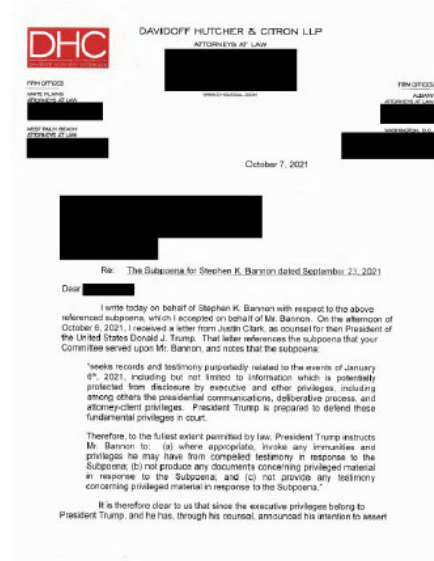
<Bannon, Stephen E. Subpoena 9.23.21 attachments.pdf>

IMPORTANT NOTICE Beware of Cyber Fraud. You should never wire money to any bank account that our office provides to you via email without first speaking with our office. Further, do not accept emailed wiring instructions from anyone else without voice verification from a known employee of our office. Even if an email looks like it has come from the office or someone involved in your transaction. Example: call (313) 436-0600. You know to be correct for this office to verify the information before wiring any money. Be particularly wary of any request to change wiring instructions you already received.

STATEMENT OF CONFIDENTIALITY
The information contained in this electronic message and any attachments to this message was intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify us immediately by email reply to sender or by telephone to Davidoff Fletcher & Cohen LLP at (800) 763-2843, ext. 2334, and destroy all copies of this message and any attachments.
RE DISCLOSURE NOTICE
In accordance with Internal Revenue Service Circular 230, we inform you that any disclosure of a Federal tax issue contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any recipient for the purpose of (1) avoiding penalties that may be imposed on the recipient under United States Federal tax laws, or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Mr. TONOLLI. On September 23, 2021, * * * emailed Mr. Costello the subpoena to Mr. Bannon and the accompanying materials included in exhibit 1 and asked whether Mr. Costello was authorized to accept service of the subpoena on Mr. Bannon's behalf.

Mr. Costello replied to * * * on September 24, 2021, that he was authorized to accept service of the subpoena on Mr. Bannon's behalf.
I will mark as exhibit 3 and enter into the record a letter Mr. Costello sent to * * * on October 7, 2021.



DAVIDOFF HUTCHER & CITRON LLP

October 7, 2021

Page 2

those executive privileges enumerated above, we must accept his direction and honor his invocation of executive privilege. As such, until these issues are resolved, we are unable to respond to your request for documents and testimony.

We will comply with the directions of the courts, when and if they rule on these claims of both executive and attorney client privileges. Since these privileges belong to President Trump and not to Mr. Bannon, until these issues are resolved, Mr. Bannon is legally unable to comply with your subpoena requests for documents and testimony.

Very truly yours,

/s/ Robert J. Costello

RJC:mc
None

Mr. TONOLLI. In sum and substance, the letter states that Mr. Bannon is, "legally unable to comply with your subpoena requests for documents and testimony," because President Trump's attorney informed Mr. Costello by letter, dated October 6, 2021, that President Trump is invoking executive privilege, "to the fullest extent permitted by law," and instructing Mr. Bannon not to provide documents or testimony, "concerning privileged material," in response to the Select Committee's subpoena.

I will mark as exhibit 4 and enter into the record a letter that Chairman THOMPSON sent to Mr. Costello in response on October 8, 2021.

STANLEY C. TARTAGLIA, ATTORNEY
AT LAW
2001 LANSING AVENUE
SUITE 1000
ANN ARBOR, MI 48106-1500
TEL: 734.769.1000
FAX: 734.769.1001
WWW.STANLEYCATTORNEY.COM

U.S. HOUSE OF REPRESENTATIVES
OFFICE OF THE CLERK
1500 MICHIGAN AVENUE, N.E.
WASHINGTON, D.C. 20540
TEL: 202.225-4800
WWW.HOUSE.EDU

The Nineteenth Congress
Select Committee to Investigate the January 6th Attack on the United States Capitol

October 8, 2021

Mr. Robert J. Costello
Davidoff Fletcher & Citron LLP
[REDACTED]

Dear Mr. Costello,

I write in response to your October 7, 2021 letter which states that your client, Stephen Bannon, is "legally unable to comply" with the September 23, 2021 subpoena (the "Subpoena") issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee"). Your letter relies on an apparent instruction from former President Donald Trump that appears limited to requesting that Mr. Bannon not disclose privileged information. Despite this limited instruction, your letter takes the inappropriate position that Mr. Bannon will not comply with any request for information or testimony sought by the Select Committee. Moreover, Mr. Trump's stated "intention to assert these executive privileges" that may or may not belong to him, does not provide a legal basis for Mr. Bannon's refusal to comply with the Subpoena.

You accepted service of the Subpoena for documents and testimony on Mr. Bannon's behalf on September 24, 2021. The Subpoena required that, by October 7, 2021 at 10:00 a.m., Mr. Bannon produce certain documents and other records referring or relating to the matters described in the Subpoena's schedule. All the requested documents relate directly to the inquiry being conducted by the Select Committee, serve a legitimate legislative purpose, and are within the scope of the authority expressly delegated to the Select Committee pursuant to H.R. Resolution 503. In the letter accompanying the Subpoena, the Select Committee set forth the basis for its determination that the documents and records sought by the Subpoena and Mr. Bannon's deposition testimony are of critical importance to the issues being investigated by the Select Committee.

Your letter indicates that the sole basis for defiance of the Subpoena is Mr. Trump's "directions" to your client and his decision to "honor [Mr. Trump's] invocation of executive privilege." That position has no basis in law, and your letter does not cite any statute, case law, or other legal precedent for support.

It is virtually all the documents and testimony sought by the Subpoena concern Mr. Bannon's actions as a private citizen and involve a broad range of subjects that are not covered by executive privilege. You have provided no basis for Mr. Bannon's refusal to comply with

Mr. Robert J. Contello

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these portions of the Subpoena not covered by any privilege. Furthermore, blanket assertions of the deliberative process and attorney-client privileges, such as those apparently requested by Mr. Trump, have been rejected by courts as “unavailing” even when—unlike the situation with Mr. Bannon—the subpoena recipient is an executive branch agency. *See Cohen on Oversight and Gov’t Reform v. Holder*, 2014 WL 1366365, at *2 (D.D.C. 2014) (rejecting DOJ’s assertion of deliberative process privilege on all documents after a particular date and noting that the “Attorney General has not cited any authority that would justify this sort of blanket approach”).

Second, the Select Committee has not received any assertion, formal or otherwise, of any privilege from Mr. Trump. Even assuming that, as a former President, Mr. Trump is permitted to formally invoke executive privilege, he has not done so. At most, Mr. Trump has “announced his intention to assert those executive privileges.” The Select Committee is not aware of any legal authority, and your letter cites none, holding that the mere intention to assert a privilege absolves a subpoena recipient of his duty to comply.

Third, your letter indicates that Mr. Trump has requested that your client “to the fullest extent permitted by law . . . not provide any testimony concerning privileged material in response to the Subpoena.” Even if your client had been a senior aide to the President during the time period covered by the contemplated testimony, which he was most assuredly not, he is not permitted by law to the type of immunity you suggest that Mr. Trump has requested he assert. To the contrary, every court that has considered the absolute immunity Mr. Trump claims to have rejected it. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 105 (1982); *Cohen on the Judiciary v. Mier*, 358 F. Supp. 3d 51, 106 (D.D.C. 2008) (rejecting former White House counsel’s assertion of absolute immunity from compelled congressional process). Others made clear that even the most senior Presidential advisors may not invoke a congressional subpoena “based solely on their proximity to the President.” *Id.* at 101 (citing *Harlow*, 457 U.S. at 819).¹ If there is no absolute immunity for senior Presidential advisors, then there certainly can be no such immunity for private citizens, such as Mr. Bannon, who occasionally communicate with the President on non-official, non-governmental, or campaign-related matters.

Regardless of any purported privilege assertion by Mr. Trump, Mr. Bannon has an ongoing obligation to produce documents to the Select Committee. Accordingly, please produce all responsive documents and records identified in the Subpoena. Should Mr. Bannon seek to withhold specific responsive documents, consistent with the Subpoena’s instructions, he must provide the Select Committee with a privilege log that “identifies and describes the material in a manner ‘sufficient to enable resolution of any privilege claims.’” *See Cohen on Oversight*, 2014 WL 1262662 at *2 (quoting *Mier*, 358 F. Supp. 3d at 107). Such a privilege log should, at a minimum, provide the author(s) and recipient(s), indicate the general subject matter of each document being withheld, and the specific basis for withholding it.

¹ It is also worth noting that the court in *Mier* rejected the former White House Counsel’s claim of absolute immunity from congressional testimony even though the sitting President had formally invoked executive privilege. *Mier*, at 62.

Mr. Robert J. Conello
Page 3

Finally, the Select Committee expects Mr. Berman's appearance at the time and place designated in the Subpoena for a deposition and respond fully to questions by the Select Committee. If there are specific questions at that deposition that you believe raise privilege issues, Mr. Berman should raise them at that time for the deposition record for the Select Committee's consideration and possible judicial review.

Please be advised that the Select Committee will view Mr. Berman's failure to appear to the Subpoena as willful non-compliance with the Subpoena. His willful non-compliance with the Subpoena would force the Select Committee to consider invoking the contempt of Congress procedures in 2 U.S.C. §§ 192, 194—which could result in a referral from the House to the Department of Justice for criminal charges—as well as the possibility of having a civil action to enforce the Subpoena brought against Mr. Berman in his personal capacity.

Sincerely,



Bonnie G. Thompson
Chairman

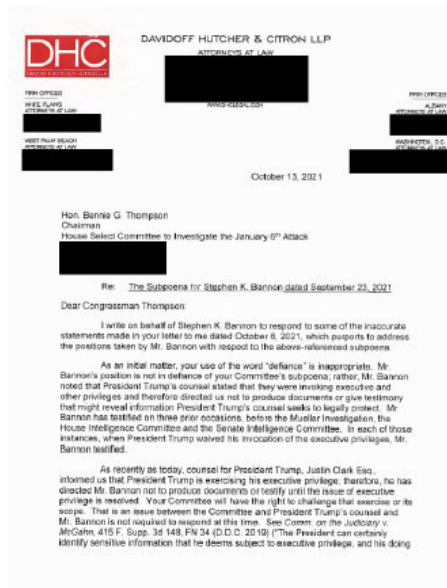
Mr. TONOLLI. And I'll take a brief pause to recognize that Mr. SCHIFF has joined us.

Turning back to the letter that Chairman THOMPSON sent on October 8th, in sum and substance, the response states that Mr. Costello's letter relies on an apparent instruction from former President Donald Trump that appears limited to requesting that Mr. Bannon not disclose privileged information. Despite this limited instruction, your letter takes the inappropriate position that Mr. Bannon will not comply with any request for information or testimony sought by the Select Committee. Moreover, Mr. Trump's stated intention to assert those executive privileges that may or may not belong to him does not provide a legal basis for Mr. Bannon's refusal to comply with the subpoenas.

The letter states the Select Committee's expectation that Mr. Bannon would appear today for the deposition and respond fully to the Select Committee's questions and to state for the record any objections to particular questions for the Select Committee's consideration and possible judicial review.

The letter concludes by advising that the Select Committee will view Mr. Bannon's failure to respond to the subpoena as "willful noncompliance," that would force the Select Committee to consider invoking the contempt of Congress procedures entitled to United States Code, sections 192 and 194, which could result in a referral from the House to the Department of Justice for criminal charges as well as the possibility of a civil action against Mr. Bannon personally to enforce the subpoena.

I will mark as a final exhibit, exhibit 5, and enter into the record a reply letter that Mr. Costello sent to Chairman THOMPSON, the evening of October 13, 2021.



DAVIDOFF HUTCHER & CITRON LLP

Hon. Bernie G. Thompson
October 13, 2021
Page 2

so gives rise to a legal duty on the part of the aide to invoke the privilege on the President's behalf when, in the course of his testimony, he is asked a question that would require disclosure of that information.")

Until such time as you reach an agreement with President Trump or receive a court ruling as to the extent, scope and application of the executive privilege, in order to preserve the claim of executive and other privileges, Mr. Barron will not be producing documents or testimony. As noted previously, Mr. Barron will revisit his position if President Trump's position changes or if a court rules on the matter.

Mr. Barron's communications with President Trump on the matters at issue in the Subpoena are well within the scope of both the presidential communications and deliberative process executive privileges. See *In re Sealed Case* (Egyp), 121 F.3d 729 (D.C. Cir. 1997) (holding that the presidential communications privilege covers communications made or received by presidential advisors in the course of preparing advice for the President even if those communications are not made directly to the President); *Coastal States Gas Corp. v. U.S. Dept of Energy*, 611 F.2d 854, 868 (D.C. Cir. 1979) (finding that deliberative process privilege applies to "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.")

Very truly yours,

/s/ Robert J. Costello

RJC:nc

Mr. TONOLLI. In sum and substance, the letter reiterates that Mr. Bannon is abiding by President Trump's invocation of executive privilege and direction to Mr. Bannon not to produce documents or testify.

In support of Mr. Bannon's position, the letter cites several judicial opinions on executive privilege, including a 2019 decision of the United States District Court in Washington in the case of *Committee on the Judiciary v. McGahn*.

In particular, the letter cites the following sentence from the court's opinion: "The President can certainly identify sensitive information that he deems subject to executive privilege, and his doing so gives rise to a legal duty on the part of the aide to invoke the privilege on the President's behalf when, in the course of his testimony, he is asked a question that would require disclosure of that information."

However, Mr. Bannon is not here today to assert executive privilege on a question-by-question basis. He chose instead not to appear at all, just as he chose not to produce any documents at all or even a log of responsive documents that he is withholding based on the claim of executive privilege.

With that, I will note for the record that it is 10:06 a.m., and Mr. Bannon still has not appeared or communicated to the Select Committee that he will appear today as required by the subpoena.

Accordingly, the record is now closed as of 10:06 a.m.
[Whereupon, at 10:06 a.m., the deposition was concluded.]

